## TEXAS DEPARTMENT OF MOTOR VEHICLES BOARD MEETING

Thursday, November 8, 2012

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

## BOARD MEMBERS:

Victor Vandergriff, Chair
Laura Ryan, Vice Chair
Robert "Barney" Barnwell, III
Blake Ingram
Cheryl E. Johnson
Raymond Palacios
Victor Rodriguez
Marvin Rush
Johnny Walker

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## PROCEEDINGS

MR. VANDERGRIFF: Good morning. My name is
Victor Vandergriff, and I'm pleased to welcome you here
today to the meeting of the Board of the Department of
Motor Vehicles. I'm now calling the meeting for November
8, 2012 of the Board of the Texas Department of Motor
Vehicles to order, and I want to note for the record that
the public notice of this meeting, containing all items on
the agenda, was filed with the Office of Secretary of
State on October 30, 2012.

Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode.

And if you wish to address the board during today's meeting, please complete a speaker's card at the registration table. To comment on an agenda item, please complete a yellow card and identify the agenda item. If it is not an agenda item, we will take up your comments during the public comment portion of the meeting.

And now I'd like to have a roll call, please, of the board members. Board Member Barnwell?

MR. BARNWELL: Present.

MR. VANDERGRIFF: Board Member Ingram?

MR. INGRAM: Present.

MR. VANDERGRIFF: Board Member Palacios?

1	MR. PALACIOS: Present.
2	MR. VANDERGRIFF: Board Member Rodriguez?
3	MR. RODRIGUEZ: Present.
4	MR. VANDERGRIFF: Board Member Walker?
5	MR. WALKER: Present.
6	MR. VANDERGRIFF: And let the record reflect
7	that I, Victor Vandergriff, am here too. We do have a
8	quorum.
9	Let the record reflect that Board Members Rush,
10	Johnson and Vice Chair Ryan are absent today.
11	At this point in time, I will notice we do not
12	have any comments from the public. Is there anybody in
13	the audience who has not filled out a card that would just
14	like to speak to us in general?
15	(No response.)
16	MR. VANDERGRIFF: Seeing none, I do want to
17	make a couple of quick announcements. One is that at our
18	December meeting we will be taking up the annual election
19	of the vice chair so I want to notify the board of that,
20	that will be on our action items for December, as well as
21	the public.
22	And with that, I don't think I have any other,
23	except I know the executive director has some
24	announcements but you're probably going to reserve those

for later, or do you want to make that.

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MS. BREWSTER: If I could do them now, that would be great.

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MR. VANDERGRIFF: Please, go ahead.

MS. BREWSTER: Thank you, Mr. Chairman. For the record, my name is Whitney Brewster, executive director.

Over the last couple of months the department has been very busy building its executive team, and I just wanted to take the opportunity to welcome three new members of that team. The first to join us is Jimmy Archer. He's been tapped to lead our Motor Carrier Division. Jimmy is a seasoned veteran of state service, having retired after 25 years of service, most notably as chief of the Criminal Investigations Division at the Comptroller's Office. He has jumped in with both feet and we're really glad to have him onboard.

I do want to take the opportunity to thank

Ginny Booton for serving as the interim and her

leadership. She did an excellent job and appreciate her

work.

The next to join us is Jonathan Taylor as our Enterprise Project Management Office director. Jonathan most recently served as the director of the Texas Emerging Technology Fund in the Office of the Governor. He also served eight years in the U.S. Army Reserve as a staff

sergeant combat medic and combat advisor. He will be heading the Enterprise Project Management Office where he will work with department leadership and our stakeholders, business owners to define and develop our transformation projects. So we welcome him and glad that he's onboard.

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And soon we will welcome the newest member of our team, Margaret Wilson, as our general counsel. She will begin December 3. She's been practicing law since 1984. Most recently she's worked in a private practice in Austin with an emphasis on administrative law and litigation. She's also served as general counsel in the Office of the Governor, and deputy general counsel at the U.S. Department of Commerce. So we are really thrilled to have Margaret onboard.

And I also want to thank Jennifer Soldano for her work as the interim. She's done a great job as well, and really appreciate the work that you've done, Jennifer.

And all of the GCO, appreciate your work.

And thank you to you, Chairman, and Member
Rodriguez for assisting with the hiring of Ms. Wilson. It
was a very good process and appreciate that.

I also want to take the opportunity to announce that our own Ginny Booton, our Consumer Relations Division director, received Woman of the Year from the Executive Women in Texas Government. It's a great honor, it's their

highest award, and I was so very proud to watch Ginny accept that award just last Monday at their annual conference. And we all know what great things Ginny does for our department, but she really does a lot of great things outside of this agency. She does a lot of mentorship, a lot of volunteer work, and we're just very, very proud of Ginny.

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MR. VANDERGRIFF: Congratulations very much. (Applause.)

MS. BREWSTER: Mr. Chairman, there were also four other nominees for that award from our department that I would like to recognize. They were all nominated for this award, they received a certificate from Governor Perry. And those include Carol Davis, Carolyn Coverson, Carol Fallin and Meaghan Ahmed.

MR. VANDERGRIFF: Great. Congratulations to them as well.

MR. INGRAM: This is a little bit alarming for me because I'm concerned that other people might get to know how great these people are, so I'm a little bit worried about that.

(General laughter.)

MR. VANDERGRIFF: We have Amy Kovar from the Attorney General's Office that has some briefings for us for executive session, and in consideration for her time,

we don't anticipate that being a long executive session but we are going to go a little bit out of order and have an executive session now, and I would anticipate probably no more than perhaps 20 minutes that would take place on that, depending on questions from the board.

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So it is now approximately 9:10 in the morning on November 8, 2012, and we will go into closed session pursuant to Section 551.071 to obtain advice from legal counsel regarding contemplated or pending litigation matters. So with that, we will be recessed from the public meeting and we're into executive session.

(Whereupon, at 9:10 a.m., the meeting was recessed, to reconvene this same day, Thursday, November 8, 2012, following conclusion of the executive session.)

MR. VANDERGRIFF: It's approximately 9:48 a.m. on November 8, 2012, and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken in public session that requires a vote here in the public.

With that, I'd like to move to number 2 on our agenda, which is the consent agenda. Mr. Harbeson.

MR. HARBESON: Yes, sir. Good morning. My name is Bill Harbeson. I'm the director of the Enforcement Division for the Texas Department of Motor Vehicles.

On today's consent agenda there are 69 1 enforcement agreed orders. These are cases where the 2 3 staff and the respondents have reached a settlement following the institution of the disciplinary action. 4 There are 30 enforcement notice of violations. 5 6 our citations or tickets that are issued for minor 7 violations in the field by our investigators, and the 8 respondents have agreed to pay the civil penalty and have signed the order. There are 21 enforcement motions to 9 dismiss. This is where staff has decided to dismiss the 10 case after either hearing from the respondent or 11 determining that pursuing the case would not be in the 12 13 best interests of the state. There are six Lemon Law settlements and dismissals where cases were settled 14 15 between the parties, and there's five franchise dismissals. 16 17 The staff is requesting that these matters be 18

approved.

MR. VANDERGRIFF: Submit the item to the board MR. INGRAM: Mr. Chairman, I move that we approve the consent items A through E, as stated.

MR. BARNWELL: Second.

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MR. VANDERGRIFF: We have a motion from Board Member Ingram, a second from Board Member Barnwell. Please raise your right hand in support of the motion.

(A show of hands.)

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MR. VANDERGRIFF: The motion carries unanimously of the board members present here today. Again, Board Members Ryan, Rush and Johnson are not with us today. And let the record reflect -- I did not do this earlier -- that prior to the executive session at 9:10 a.m., Board Member Rodriguez left the meeting, he did not participate in executive session. He had an emergency back in McAllen that he needed to go back to and left immediately. So he will not be with us for the rest of the meeting. We do still have a quorum.

So with that, we're moving to item number 3 which is resolutions for individual consideration.

MR. HARBESON: Yes, sir. Item 3.A is the enforcement motions for disposition. These are cases where staff has initiated an action, there's been no response from the respondent. The case was removed from SOAH and brought back to the agency under the agency rules for the entry of an order. You have been presented today with 20 such orders, and staff is requesting that they be approved.

MR. WALKER: So motion that we accept the staff's recommendation.

MR. VANDERGRIFF: Do we have a second?

MR. BARNWELL: Second.

MR. VANDERGRIFF: A motion from Board Member Walker, a second from Board Member Barnwell. Seeing no indication of any discussion, please raise your right hand in support of the motion.

(A show of hands.)

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MR. VANDERGRIFF: We're on to item 3.B.1.

MR. GLADNEY: Good morning. May I proceed?

MR. VANDERGRIFF: Please.

MR. GLADNEY: For the record, Mark Gladney, Lemon Law Section manager.

I have two cases to present today. The first case is Risvandvic v. Volvo and Cummins, Docket No.

12-0111. In this particular case the complainant sought relief for alleged defects with his 2012 Volvo 780 tractor-trailer truck purchased on April 8 of 2011, specifically, the nitrogen oxide sensor that complainant alleged malfunctioned if exposed to moisture.

There was a hearing held before SOAH on May 31 of this year in Austin. The evidence showed that eight repair attempts were made between September of 2011 and April of 2012. Respondent determined that the placement of the sensors made the ceramic crack on the NOX sensor due to the placement near the hot exhaust. The remedy included a relocation of the sensor to a higher place in the exhaust system. The respondent argued at hearing that

the repairs have been made and that further repairs were unnecessary. There was no evidence of a continuing defect with the NOX sensor at the hearing. The SOAH ALJ recommended dismissal.

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In this particular case you recently received in your packets a letter from the complainant updating issues with the NOX sensor. This new allegation is not necessarily germane to this particular case. There is a representative from Volvo here today and I've spoken with him, the engine is still under warranty which includes the NOX sensor, so if there is a problem, the NOX sensor can be addressed with regard to the later allegations made by the complainant.

Staff concurs with the SOAH recommendation for dismissal in this particular docket and requests adoption of the PFD with the changes noted in the proposed order in your packet.

MR. VANDERGRIFF: I do have a card from Merritt Spencer from Cummins. I think it indicates he wished to speak on this, but I'm not sure, based on what you said.

MR. SPENCER: (Speaking from audience.) As I informed Mr. Gladney before the hearing, I did fill out a card in case the board had any questions, but we're obviously in support of the recommendation made by the staff. I don't think I need to waste any more time of the

board, but I am here if there any questions about this 1 case. 3 MR. VANDERGRIFF: All right. Thank you. MR. WALKER: I don't know if it's appropriate 4 to ask a question or wait till we get to discussion. 5 6 MR. VANDERGRIFF: He's asking for a motion, so 7 I'm pleased to entertain one and then go to discussion, or 8 if you have a question of him before that, you can do it 9 now. 10 MR. WALKER: When I read this I had two concerns with this case. Number one is that -- and I 11 quess I really need to ask you a question. 12 13 MR. VANDERGRIFF: You might come up and identify yourself for the record, Mr. Spencer. 14 15 MR. SPENCER: Chairman, members of the board. 16 For the record, my name is Merritt Spencer. I'm here with the law firm of Strasburger & Price. I'm here on behalf 17 of Cummins. Mr. Gladney accidentally misspoke, I'm 18 19 actually here on behalf of Cummins. Cummins and Volvo were two separate respondents in the proceeding. The issue in 20 the Lemon Law proceeding was the NOX sensor which was 21 22 mainly a Cummins matter. MR. WALKER: My question was this: Did we do a 2.3 24 recall on all trucks across the board to fix this, or is it just this particular truck? Because wouldn't they have 25

put the NOX sensor in the same place on all other trucks manufactured at that time?

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MR. SPENCER: My recollection from the evidence at the hearing is that no, there was something specific about the formulation of this truck, and there were several other trucks like it with regard to how the exhaust system was situated and how the NOX sensor was put on. I do not believe this was an extensive matter involving many trucks, it was involving some trucks, and I believe the evidence was that they had, I think, five trucks had the problem come up that they put this fix on and that the repair, the success rate so far has been 100 percent.

MR. INGRAM: Mr. Spencer, the warranty on a Cummins engine is how much?

MR. SPENCER: I believe it's two years or -- it was either 200- or 250-. The record shows 250,000 miles.

MR. INGRAM: And I believe the plaintiff in this one said that the truck, the newest letter said that it was around 125,000 miles currently?

MR. SPENCER: That was the Volvo truck warranty which is separate and apart from the Cummins warranty.

MR. INGRAM: What is the mileage as of the last contact that we had with him? I believe it was around 125,000. Does that sound right, Mark?

MR. GLADNEY: At the time of the hearing it was 106,000 miles.

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MR. INGRAM: What date was the hearing?

MR. GLADNEY: The hearing date was May 31.

MR. PALACIOS: Mr. Spencer, I understand the most recent issue that he's having with the truck is not necessarily relevant to the nitrous oxide issue that he had previous. Is that correct?

MR. SPENCER: At the hearing he brought up an issue that there had been some fluid leakage, and prior to the hearing Cummins put a data logger onto the truck and see if they could determine if there was any NOX sensor fault readings coming out, and there was not. The only fault reading that came out from the data logger prior to the hearing was low coolant. The problem was that by the time of the hearing it had not been submitted for any repair on that, so there was no evidence of what exactly was causing the coolant leak or whether it was a non-conformity that could be repaired.

MR. PALACIOS: So is that problem subject to warranty? Will it be covered under the warranty?

MR. SPENCER: If it's an engine issue, it would be. I understand that sometimes you can have coolant leaks from hoses or something that would be on the OEM, not necessarily the engine manufacturer. But if it's a

coolant leak because of an engine problem, then yes, my understanding is it would be covered by warranty.

MR. WALKER: The petitioner on this particular case -- I don't remember his name right now --

MR. SPENCER: Rizvandvic.

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MR. WALKER: -- I think he's a single -- I assume, because it never says anywhere in any of the pleadings, he is a single operator, operates one truck as an independent trucker.

MR. SPENCER: I believe that's correct.

MR. WALKER: And I know that his truck was down numerous times because of the defect in the truck with the NOX sensor, and I know that that's his form of how he makes a living. And so he has asked us if we would grant some kind of restitution to him for all the days that he lost that he couldn't work due to the fact, and he's even asked for loss of business because he's lost customers. I don't know the extent of that but I know that he asked for some lost time, down time. And did Cummins offer to come back to this guy and say, hey, we had some facts, and did you offer to give him a rental truck, particularly, while the truck was down, or to make any kind of restitution while the guy lost his means of making a living while this took place?

MR. SPENCER: I know that there was some

assistance in moving the truck to where it needed to be repaired. I don't recall that and I don't believe that the record got into that level of detail of discussions that occurred between Cummins or Volvo and Mr. Rizvandvic. I'm sure there were some discussions between them, but I was not involved in that point and it really did not come up at the hearing. So I would have to get back with you on that point if the board decided it needed further information.

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MR. VANDERGRIFF: Mr. Barnwell.

MR. BARNWELL: Mr. Spencer, how many days was the truck in for service on this NOX sensor problem from the date it was purchased through April of this year?

MR. GLADNEY: As I stated before, the record evidence shows approximately eight repair attempts between September 10 of 2011 and April 10 of 2012.

MR. SPENCER: I don't recall if that was all for the NOX sensor, though. That was how many times, I think, the truck had been into shop for some reason. I don't recall if that was all for NOX sensor repairs, though.

MR. BARNWELL: Just quickly looking at it, from September of '11 through April of '12 which is eight months, nine months, how many months is that? Eight or nine months the truck was out of service more than 60

days, it was not available to this gentleman, as to Mr. Walker's point, to be used in his business, so this truck has significant issues for some reason. There was one period of 40 days it was out of service, another time it was 21 days out of service. I'm just wondering what's going on here between the dealer, Cummins and Volvo. And do you represent both Volvo and Cummins?

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MR. SPENCER: No, sir, just Cummins.

MR. BARNWELL: Just Cummins. I won't ask to opine as to what their position might be, but do you have any record of what their position has been on this? I think you've answered that to your knowledge they didn't do anything.

MR. SPENCER: I'm sorry, just so that I understand your question, are you asking about what the dealer's position is?

MR. BARNWELL: What steps were taken to ameliorate these damages or this loss of use that Mr. Rizvandvic -- and I'm sure that's not correct -- might have had.

MR. SPENCER: I don't know that, and I think the evidence in the record was fairly scant on that because I believe the truck had been in the shop for various different things, but the only item that was the subject of the Lemon Law complaint was the NOX sensor.

And so I don't think there's anything in the record that distinguishes between how much the truck was down just because of the NOX sensor and for other reasons.

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And I think the ALJ noted in the PFD to the extent that the consumer wants to seek remedies for some of his prior damages or whatnot, there's a legal remedy for them to pursue under the Lemon Law or under the statutory order repair for relief to come under those provisions, the ALJ had to be presented with an uncorrected problem and there was no uncorrected problem that was before it. So my recollection from the PFD is that the ALJ said there's no current problem that's uncorrected so there's nothing for relief here. If the consumer wishes to pursue other remedies, then the consumer can do that under a different forum.

MR. BARNWELL: Understand.

MR. VANDERGRIFF: And we have one question pending, but Mr. Gladney, isn't that really the point here today is that we have a problem that appears to have been corrected, and therefore, that's where the recommendation for dismissal is coming from versus a broader question of all the other problems that he may or may not have.

MR. GLADNEY: Yes.

MR. VANDERGRIFF: Mr. Ingram.

MR. INGRAM: Mr. Gladney, this is more of an

education for me, so one of the items that you have suggested or proposed is removing the words "as long as the vehicle remains under warranty" from the PFD. So at the end of 250,000 miles, at the end of the Cummins warranty, how long does this gentleman have that NOX sensor covered?

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MR. GLADNEY: Well, generally speaking, the NOX sensor is covered for up to 250,000. Now, the way that it has been generally viewed is if there is a continuing problem, and it has to be that specific problem that was brought to bear before, then he could file another 204 action on that specific problem.

MR. INGRAM: So it sounds like it's rather wide open in terms of how far out. Could he file that action at 350,000 miles?

MR. GLADNEY: Well, again, I don't think there's anything stopping him from filing a 204. Again, it's going to be fact-specific, the fact-finder is going to have to look at all this, you know, there's a lot of factors that are going to play into this such as, say, the useful life of that particular item and some other factors, but there's nothing under our current practice that would prevent him from filing another 204 action just on that particular item if it's a continuing ongoing problem.

MR. INGRAM: Okay. So I get that. So I mean, it's really frustrating for me as a board member because I'm limited to what I'm allowed by law to do here. I would like to have seen Cummins or Volvo take a more proactive stance in this in either providing this gentleman a longer warranty or doing something more, and I'm disappointed that that hasn't happened. So that's where I'm at.

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MR. SPENCER: And that's my understanding is that the NOX sensor is part of the engine warranty. I don't believe that there has been a specific extended warranty for the NOX sensor but I don't know that 100 percent. I would have to ask Cummins that.

MR. VANDERGRIFF: Mr. Walker.

MR. WALKER: Mr. Gladney, I have a question for you. When I read this case I didn't understand, I guess, the origin of the Lemon Laws and really do the Lemon Laws apply to commercial vehicles. The reason I ask that question is because the Lemon Law is a 24,000/two-year warranty, you've got two years and 24,000. Well, that's probably reasonable for the typical person that goes and buys a car, but for a person that goes and buys a truck like myself -- and I'm not saying the Lemon Law should apply by any means -- but you get 24,000 miles on a truck within the first 60 days, so I'm questioning whether

really the Lemon Laws even were intended to apply to 1 commercial vehicles and whether maybe we really have a warranty case here instead of a Lemon Law case. 3 MR. GLADNEY: Well, that is a dilemma that 4 we've certainly discussed for quite a time because, as you 5 6 say, 24,000 miles on a truck, they can do that in the 7 first month, and this may be something that may have to be 8 corrected through a statutory change and make an exception for these type of vehicles. But we are handed the cards 9 10 that we currently have dealt by the legislature and we're kind of constrained by that particular situation. But it 11 does seem a bit inequitable for that type of vehicle and 12 13 the type of mileage they can put on it in such a very short period of time. 14 15 MR. VANDERGRIFF: Followup question? Any 16 further questions from the board? 17 (No response.) MR. VANDERGRIFF: All right. I will be pleased 18 19 to entertain a motion from the board if one is forthcoming. 20 21 MR. PALACIOS: I move that we accept staff's position to dismiss this case. 22 MR. VANDERGRIFF: We have a motion from Board 2.3

ON THE RECORD REPORTING (512) 450-0342

Member Palacios. Do we have a second to that motion?

MR. BARNWELL: Second.

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MR. VANDERGRIFF: Second from Board Member 1 Barnwell. 2 3 MR. INGRAM: Would it be possible to clarify the motion just a little bit? There is some language in 4 the motion, I realize that is the intent, something along 5 6 the lines of to accept the final order denying 2301.204 relief as stated, perhaps, or something like that. Would 7 8 that be okay? MR. PALACIOS: That's acceptable. 9 10 MR. VANDERGRIFF: Acceptable to Mr. Palacios. I'll ask our general counsel, our staff counsel on this 11 particular issue. 12 13 MS. SOLDANO: The motion may be amended. MR. VANDERGRIFF: But that particular language 14 15 is not going to impact the finding? 16 MS. SOLDANO: No. 17 MR. VANDERGRIFF: Okay. All right. Is that also acceptable, Mr. Barnwell, for your second? 18 19 MR. BARNWELL: Yes. 20 MR. WALKER: I'm a little foggy, Blake. I'm probably in your corner, so tell me what we're doing. 21 22 MR. INGRAM: Well, I mean, there is some language specifically in that final order that says that 2.3 24 we're removing the words "as long as the vehicle remains under warranty" which is not accurate. So it's not just 25

approval of the PFD, I guess is the easiest way to say it.

It's just a technicality.

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MR. WALKER: Okay. But we don't have any latitude under the law to offer any kind of compensation here, do we, Ms. Soldano?

MS. SOLDANO: No. And I'm going to go ahead and defer to Mark, he's the expert in this.

MR. GLADNEY: Generally speaking, the way our rules read as far as incidental expenses, those generally are going to apply to 604 cases, Lemon Law cases, not necessarily warranty repair cases.

MR. WALKER: But what's in front of us right now is a Lemon Law case, not a warranty case. Is that correct?

MR. GLADNEY: No. What's in front of you is a 204 warranty repair case.

MR. WALKER: Oh, so we have got the warranty. Well, then don't we have some latitude to offer or ask that the Cummins and Volvo people offer some kind of restitution for the loss of downtime on this guy's truck? I mean, there was obviously a defect in the manufacture of the truck in how it was assembled or designed. And if this were J.H. Walker Trucking, we've got a lot of trucks and you could say while that one is in the shop, go get a different truck, and there's not a loss of revenue. But

in a situation like this you've got one guy out here who makes a living driving that truck down the highway, and he's bought a new truck so that he can operate his business as efficiently as possible, thinking that he's not going to be down, and he's got a loss of revenue. And so in my mind it's not something that he could have avoided, it's not something that he did, and there ought to be some kind of restitution to this guy of some means to support him and get him by for those particular times.

MR. GLADNEY: And I can certainly understand

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MR. GLADNEY: And I can certainly understand where you're coming from on this. I'm looking at the rule right now, 215.209 and it specifically is dealing with refund and replacement cases which would be a 604 case. It presents a little bit of a problem.

MR. BARNWELL: Well, to that and to this entire point, there's no question that the motion as made is appropriate in this case. Having made this motion and this motion being passed does not prevent Mr.

Risvandvic -- I think I got it right that time --

MR. GLADNEY: You're better than I am.

MR. BARNWELL: Well, I've been practicing over here while you were talking.

(General laughter.)

MR. BARNWELL: To seek redress in the civil courts, either through warranty, DTPA, or whatever other

cause of action he might be able to put together, so he can still go after some restitution, he can still seek that.

MR. GLADNEY: I see no reason that he couldn't do that. And I want to assure you that we will stay on this case. Simply because you issue this order, we will certainly stay on the case and confer with both parties to make sure that there's equity on both sides.

MR. BARNWELL: Well, I appreciate you saying that because as part of our charge, consumer protection is out there and not in the classic litigation sense of consumer protection, but just making sure that people get the benefit of the bargain or that we understand what they haven't gotten, and that to the extent possible, we try to encourage people to do the appropriate thing.

This gentleman here obviously suffered a substantial loss, and for reasons we don't have he record to show why, but he had some loss. So going forward, it would be great, Mr. Gladney, if we could follow up on this and see what happens from Cummins and Volvo and this dealer's standpoint.

MR. GLADNEY: And for the record, I do want to say that we've had some rather good success in dealing with manufacturers, converters, distributors in these types of matters, even after the board may have made a

decision. So we do follow up, and we will, as well, in this particular case.

MR. VANDERGRIFF: Obviously, I won't repeat what you've just said, but I want to make sure I'm clear that you'd indicated earlier that trying to do something in this particular forum, based upon the decision that's before the board, I think you used a term -- I may be incorrect -- but problematic, and translated that means not really, that we're limited in what we can do in this particular setting.

MR. GLADNEY: Yes.

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MR. VANDERGRIFF: Okay. I just want to be sure that that's clear. But following up on Mr. Barnwell's comments, make sure it's clear that the petitioner is certainly able to come back and look at the matter from a different point of view.

MR. GLADNEY: With regard to this specific issue.

MR. VANDERGRIFF: Yes. And then also that the department will monitor this carefully to make sure that the so-called justice done will help this petitioner.

MR. GLADNEY: And it is my understanding that there is still a warranty out there, there is a 250,000 mile/two-year warranty that's still active, so any other problems that the complainant may have, he can certainly

1	bring a 204 action.
2	MR. VANDERGRIFF: All right. And I stand
3	corrected, I should have said complainant earlier when I
4	said petitioner.
5	We do have a motion and a second, and that
6	motion was amended by Board Member Ingram. Is there a
7	clear picture for counsel exactly what that amendment was
8	because we have a proposed order that would probably have
9	to be modified slightly.
10	MR. INGRAM: Well, that is the proposed order.
11	MR. VANDERGRIFF: All right. Sorry. I
12	apologize.
13	So with that, a motion and a second, any
14	further discussion?
15	(No response.)
16	MR. VANDERGRIFF: Please raise your right hand
17	in support of the motion.
18	(A show of hands.)
19	MR. VANDERGRIFF: The motion carries
20	unanimously.
21	MR. SPENCER: Mr. Chairman, may I be excused?
22	MR. VANDERGRIFF: Thank you very much.
23	MR. WALKER: Thank you, Mr. Spencer.
24	MR. VANDERGRIFF: We're now on item 3.B.2.
25	MR. GLADNEY: The second case I have for you is

Oualline v. GM, Docket No. 12-0192. In this particular case the complainant sought relief for alleged defects with her 2010 Cadillac SRX purchased on December 17 of 2009. In this case the complainant complained of excessive wind noise. The vehicle was brought to the dealer about five times to address that issue. During that particular time the respondent replaced the antenna, adjusted the rear hatch, replaced the roof rack and lift gate control module. The respondent also conducted tests with a like vehicle to compare it to the complainant's and claimed no further issue with the wind noise.

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There was a hearing held before SOAH on August 9 of 2012 in Midland. The PFD recommends dismissal in this case. Staff, however, seeks to remand it back to SOAH because the case was originally noticed as a 204 case but they used a 604 Lemon Law analysis on here which was not in accordance with the packet that was sent by the agency. The staff recommends adoption of the proposed order that is in your packet.

MR. WALKER: Is that a change, Mr. Gladney, from what we have in our packet? Because I thought the recommendation of staff was to deny the Lemon Law.

MR. GLADNEY: No. The order here is basically just to -- the proposed order is to reject the PFD and remand it back for consideration and analysis under 204.

At first it was filed as a 604, but we do get a lot of 1 cases where complainant will file something as a 604 3 because they want either a replacement new vehicle or they'll want a refund. In this particular case the 4 complainant didn't qualify because she was beyond the 5 6 mileage deadline as well as the time deadline. 7 MR. WALKER: Understand. And we're remanding it back to SOAH because we made an error? 8 9 MR. GLADNEY: No. The error was not ours, the 10 error was SOAH using a 604 analysis. We noticed it to SOAH as a 204 for the reasons I stated earlier. 11 12 MR. WALKER: Okay. 13 MR. INGRAM: I move we approve the interim order rejecting the proposal for decision and remanding 14 15 the case back to the State Office of Administrative 16 Hearings for further proceedings. MR. VANDERGRIFF: Do we have a second to that 17 motion? 18 19 MR. BARNWELL: I'll second that. 20 MR. VANDERGRIFF: All right. We have a motion from Mr. Ingram and a second from Mr. Barnwell. Seeing no 21 22 indication of any further discussion, please raise your right hand in support of the motion. 2.3 24 (A show of hands.)

ON THE RECORD REPORTING (512) 450-0342

MR. VANDERGRIFF: The motion carries

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unanimously.

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We're now on item number 4 on our agenda. want to note, before we get started on that, for the board that this item, of course, is subject to immediate action today if we're prepared to do that. Further discussion about this important role for the board with the staff really, I think, begs a more broader, deeper process, and as we go forward, hopefully in the future -- and we'll talk about this either in the context of this particular opinion request or going forward in future requests -- is that the board be given a much more detailed package, particularly the history behind whatever the issue is we're looking at, whether it be judicial or administrative, and then be given a sufficient period of time to review that, a board meeting in which to ask questions of the parties that may wish to provide testimony in support or against a particular opinion request, and then, in turn, come back at a subsequent meeting and issue the opinion. That would be a typical role, I think, for a body to have some time to deliberate and think about it versus an off-the-cuff decision.

The process that we're here in today, of course, obviously that's for the future, you do still have the option today if you'd like to make that decision today, but we also will afford the option, if you wish, to

basically take this under advisement and bring it back at the next board meeting. So I just wanted to alert the board to that option for today and certainly the procedure that I think we will follow going forward in the future.

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And with that, I will turn it over to the staff, Mr. Herring, in order to make this presentation to us.

MR. HERRING: Good morning. I'm Kenneth
Herring, I'm an attorney with the Motor Vehicle Division.

I believe this is the first time that the board has responded to a formal opinion request, so I'll give you some additional background. The formal opinion request provision is contained in our rules at 43 Texas Administrative Code, Section 215.84. It essentially gives the board the opportunity to provide what I would consider a customer service to the motor vehicle industry where if you are a stakeholder or a participant and you want some prior advance warning as to how the board will rule on a situation that has not been spelled out clearly in the law, you get an opportunity to ask for a formal opinion. That opinion does not lock the board into what that decision is but it does provide a business owner the opportunity to act and work with some safety because a case will not proceed against them if they act in good faith based on a board opinion.

In this situation, an independent dealer, through an attorney, has made a request for a formal opinion. The subject matter of that opinion is brokering. The law on brokering is contained in the Texas Administrative Code and that is at Section 2301.002(3), beginning with the definition of brokering. The broker means a person, who for a fee, commissioner other valuable consideration, arranges, offers to arrange a transaction involving the sale of a new motor vehicle other than a person who is a franchise dealer, a representative or a distributor for that motor vehicle or is the owner of the vehicle at some point in the transaction.

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Essentially, in this particular case, on June 13, 2012, Smith & Associates, an Austin-based law firm, presented a formal opinion request to the Texas Department of Motor Vehicles. In this request, Smith stated they had an undisclosed client who has an independent dealer's license who desires to offer services, including assessment, choice and negotiation, for the purchase price of new automobiles. Specifically, Smith requested that the agency find that the services requested do not violate the brokers provision found in the Texas Occupations Code.

Staff has provided a recommendation, number one, that the opinion should be heard, and number two, that the response to the opinion is a rejection and that

the contemplated activity does, in fact, violate the brokering prohibition.

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As a part of the process for reviewing the request for opinion, the first thing that has to happen is the board has to make a determination whether or not the opinion is something that is appropriate for consideration. Contained in our rules about what's appropriate for consideration is a question as to whether or not the subject matter of the request is something that's currently before the board or another state agency.

Staff has reviewed this matter and determined that there are cases where dealers have been accused of violating the code against brokering bu those cases do not involve the subject matter that is specific to this requester's request. So it is staff's preliminary opinion that this is something that could be considered by the board. Of course, that is your prerogative to make a decision about that.

That's sort of my brief presentation. If you have some questions about our positions here, I'll be happy to answer any questions. Also, I believe the presenter of the request is present so they can make their request in full.

MR. WALKER: Can you give me a specific as to how this would work?

1	MR. VANDERGRIFF: Brokering in general, or the
2	specific instance?
3	MR. WALKER: I understand brokering in general,
4	it's specific to what they want to do.
5	MR. HERRING: What the requester has suggested
6	is that they will offer services to people who come to
7	them and they will help them decide what is the
8	appropriate vehicle for them, and then they would
9	accompany them to a dealership and help them in the
10	negotiation process for the purchase of the vehicle.
11	MR. WALKER: So they're not going to be selling
12	vehicles, they're going to be purchasing vehicles.
13	MR. HERRING: No. As the requester presents
14	it, they would accompany a prospective buyer to a new
15	vehicle dealer franchise and assist them in the
16	negotiation process for the vehicle that they want.
17	MR. WALKER: Where do they collect their money
18	from?
19	MR. HERRING: They get paid an hourly fee for
20	assisting in this process.
21	MR. WALKER: Who pays, which side?
22	MR. HERRING: The potential prospective buyer
23	would be paying.
24	MR. WALKER: The buyer pays?
25	MR. HERRING: Yes.

MR. VANDERGRIFF: Mr. Ingram.

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MR. INGRAM: So, Mr. Herring, you've got the statute out there, 2301.002, it doesn't really address who pays in the statute, it just says you can't do it. How would this be feasible? How would you go against the statute in this case? I don't fully understand the argument that this is not a broker.

MR. HERRING: Well, I tend to agree with you that to me this is clear brokering and it's within the definition of brokering what they want to do, but I believe the requester takes the position that because the purchaser is paying that carves out an exception for them. That's something I disagree with. And they also take the position of the fact if they're not paid per transaction or if there is ultimately a transaction, that carves out an exception for them. Again, that's something that staff has disagreed with.

MR. VANDERGRIFF: I think we do have -- you can certainly ask questions of Mr. Herring, but we will have a chance with the requesting party to hear their counsel.

MR. INGRAM: I understand. I just wanted to make sure I understood.

MR. VANDERGRIFF: Yes, Mr. Palacios.

MR. PALACIOS: Mr. Herring, I want to clarify again that the statute makes not distinction between who

pays the fee or whatever it may be, the commission, whether it's the dealer or the purchaser. In both cases, as I understand it, it's illegal.

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MR. HERRING: Yes. The statute is very clear. The statute begins by defining what a broker is and stating that a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle, with the exclusions of franchise dealers, representatives or distributors, or of course, an owner of a vehicle. And then it goes to another section of the statute that specifically says it is prohibited to act as a broker. So it seems to me pretty clear that this type of activity is prohibited without any exception as to who pays the fee or how the fees are collected.

MR. PALACIOS: Thank you.

MR. VANDERGRIFF: Any further questions at this point of Mr. Herring? He will obviously stay here and will be available for questions throughout.

With that, I believe we do have for the requesting party Rebecca Sobie, who is here to speak on behalf.

MS. SOBIE: Good morning, DMV Board members.

I'm Rebecca Sobie with Smith & Associates Law Firm.

Thanks for this opportunity to consider our request for a

formal opinion regarding interpretation of the brokering prohibition in the Texas Occupations Code. I do have a brief statement kind of in conjunction with our request, and I think that it will answer some of the questions that you had raised to Mr. Herring.

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We agree that the intent of the Texas

Occupations Code is to protect consumers in the State of

Texas. The goal of our client services is to protect and

assist consumers. We believe our request is consistent

with the objective of the Texas laws. In fact, as cited

in our request, the Texas Administrative Code acknowledges

that the intent of Chapter 2301 of the Occupations Code

includes the prevention of fraud, unfair practices and

abuses of the people of this state in connection with the

sale of motor vehicles.

Our client's proposed services will ensure that clients are informed and fairly represented during the negotiation process for new automobiles. Our client assists consumers who include the elderly population, young individuals buying their first car, and women.

Numerous studies have shown that, generally speaking, women are uncomfortable haggling over major purchases, and particularly in the automobile industry women can easily be taken advantage of. The same applies to elderly and young individuals.

The typical automobile negotiation process can be very overwhelming and unpleasant for the average buyer, and it's often intentionally made difficult. It's recognized by the automobile industry, for instance, manufacturers such as Mini advertise that their clients don't have to negotiate. Most consumers are unfamiliar with the interworkings of the process. For instance, that Texas law doesn't require dealers to disclose damage to a brand new car unless the buyer asks. Many buyers also aren't aware that warranties are negotiable, and are certainly not aware that the suggested markup on warranty sales are as much as 100 percent.

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As outlined in our formal request, we respectfully assert it's clear that our client doesn't, quote, solicit or refer buyers for new motor vehicles for a fee, commission or other valuable consideration. That's how the Texas Administrative Code defines arranges or offers to arrange a transaction as set forth in the Occupations Code. Just for further guidance on that arranging or offer to arrange a transaction, it kind of hinges on how the Texas Administrative Code interprets it which is as soliciting or referring buyers.

Now, comment letter number 2 which is authored by the Texas Automobile Dealers Association and other associations, acknowledges that the act of negotiating

standing alone doesn't satisfy the brokerage prohibition, yet that leads to the conclusion that negotiating alone would constitute brokering.

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So the services that our client is proposing to offer involves mere negotiation which we assert isn't akin to solicitation or referring which is actually what would be prohibited under the brokerage prohibition. Simply providing an ethical service that our client endeavors to provide in order to educate and to assist the buyers and enable them to purchase new cars, in addition to used cars, with the assistance of an advocate. So therefore, it would be on a level playing field, our client assists people who are looking to buy vehicles, whether it's new or used. The client already assists with the purchase of used vehicles, holds a general distinguishing number to be a used car dealer and is just simply seeking to add to those services if clients are interested in purchasing new vehicles.

Regarding concerns about ethics of our client services, comment number 1 seemed to have some concerns with that. We can assure the DMV that our client is highly ethical, wouldn't take any incentives or kickbacks from the dealerships and any unethical or unlawful behavior would be reviewable by the Enforcement Division, so it's really a non-issue in the consideration of this

request.

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This is clearly an industry that's deserving of consumer protection and our client would like to provide this service to new car buyers who are otherwise unfamiliar or scared of the process. There's nothing more protective of consumers than these contemplated services.

And if you'd like to see viewpoints from some of the general public or the buyer's perspective, comments 4, 5, 6 and 7 are authored by general public or buyers who would support these services.

Thank you for your time and I'd be happy to answer any questions.

MR. VANDERGRIFF: Mr. Walker.

MR. WALKER: My concern is that you actually brought up some ideas that the client is intimidated by the car dealer, they're young, they're elderly. What's to prevent somebody who does this, your client, particularly, from going out here and going to a car dealer, cutting a deal with them and saying hey, I've got these people that I can bring over here and you sell cars to, and what's to protect those people from them taking advantage from unscrupulous deals with a dealer that they're making on a one-to-one basis because these people are too concerned about going out and dealing with a dealer on a one-to-one basis themselves?

MS. SOBIE: Well, I can assure you that this 1 particular client --2 3 MR. WALKER: But you can't guarantee me that every other person out there is not going to -- somebody 4 else is going to go out there and say hey, I can take 5 6 advantage, there's an opportunity here, there's a lot of people that are intimidated by car dealers -- I don't know 7 8 why -- but they would take advantage of people like that 9 and say hey, let me do the dealing and go to the car 10 dealer and say I can bring all these intimidated people over here and you pay me \$50 for every one of these deals 11 I bring to you and I'm going to get \$50 off of that and 12 13 make 100 bucks. MS. SOBIE: Which would be unlawful on both 14 15 ends. 16 MR. WALKER: But how do we prevent that in the 17 situation that you're proposing to us? MS. SOBIE: Well, that would be within the 18 19 purview of the Enforcement Division. There wouldn't be anything to stop, necessarily, a dealership equally with 20 our client from --21 MR. WALKER: But wouldn't that be putting an 22 undue burden on my Enforcement people to ask them to get 23 24 involved in every transaction? 25 MS. SOBIE: I think that that would be the

purpose of the Enforcement Division is to enforce these laws.

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MR. VANDERGRIFF: And I'm going to ask a followup to that, but how could we, for example, I'm sure you're familiar with how he real estate works in that that usually is done on a commission, but a buyer will have an agent, that agent ostensibly works for them, and yet will regularly cut deals to split the commission on a home sale or a property sale, that's a regular practice. And so how is the department, if we allow this to go forward -- and it would be a global allowing it, not just for your client but anyone else could follow this model -- how do we police a situation where a customer is in a dealership and just says Smith -- or your client, I don't mean to say your firm -- your client is charging \$400 for this service and cut the price of my vehicle by \$200 and we're basically splitting the commission here or splitting the fee. And how are we to police that, how are we to prevent that from happening? What sort of resources are we going to have to employ in the State of Texas in order to really be involved in that?

MS. SOBIE: And the model here is that the best interests, our client is acting in the best interests of the buyers who come to client for the services.

MR. VANDERGRIFF: Well, but brokers in other

industries act in the best interest of their clients, and 1 yet regularly split the fee, if you will -- sometimes it's 2 3 a commission, sometimes it's a pure fee -- in order to make a deal or close the sale, if you will. And this is a 4 close the sale industry and customers are free to 5 6 negotiate with respect to the purchase of vehicles and what's to prevent that very scenario from happening or 7 8 even being encouraged by your very client? MS. SOBIE: Although in the big picture the 9 buyers are really paying for the global services, not just 10 11

buyers are really paying for the global services, not just necessarily negotiation but also the services in terms of knowledge of directing them to the correct vehicle and assisting them with the purchase and other aspects of the purchase. My understanding is that other states probably allow this type of process

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MR. VANDERGRIFF: That's right, but we're in Texas.

MS. SOBIE: Right. But in terms of, I mean, if the board needed guidance if this were to be allowed, there are models that occur in other states.

MR. VANDERGRIFF: Mr. Barnwell.

MR. BARNWELL: Ms. Sobie, is it your position that the current statute allows us to carve out an exception for this activity?

MS. SOBIE: I don't believe it's considered an

exception. Our position is that this would be interpretation of the statute. The statute, admittedly, is in somewhat of a gray area, but we believe that the definition, as set forth in the Texas Administrative Code, supports this interpretation of the statute that this is, in fact, not brokering.

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MR. BARNWELL: All right. I understand your position on that.

How would you anticipate -- because I'm having trouble getting my arms around this -- how would you anticipate that the Department of Motor Vehicles would be able to regulate, audit, license these brokers? Because, you see, there is no licensing, bonding or other mechanism in place under current statute for us to consider this. And so while you may have a good point about vulnerable people or people desiring to retain a representative to help them in the purchase of a vehicle, that may be fine, but under current law, if we allow the brokering, we open Pandora's Box and anybody -- and I'm sure your client is as ethical as anybody and has the best interests of his clients or future clients or proposed clients at heart, the problem is that I don't see a mechanism whereby we could then regulate and assure the public that what these brokers were doing was subject to some sort of overview, some sort of audit, some sort of regulation and control to make sure that they do what they're saying they're going to do.

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And as far as I'm concerned, this may have some merit but the place to take this is to the legislature because you're going to have to change the law before I can vote for this. I just don't see a way to get where you want to get to from my standpoint today. With the law being what it is and the lack of a mechanism and a way to implement and control and act on it, my hands are tied. Even though it may be a very good idea, I can't go there under the current setup that we have with our statute.

MS. SOBIE: Sure. You did raise a few points there which I appreciate, and I see your concern. I mean, our position is that it's not going beyond the interpretation of the law and how it applies to brokers versus not brokers. I mean, the current state of the law is that if someone doesn't charge a fee -- and I think you all would agree with this -- if someone doesn't charge a fee for those services, then that is allowable. So someone can bring an advocate who they're not paying to accompany them to a dealership to assist them with negotiating for the purchase of new car. So this would be just be extending it a bit, but we still think within the purview of the current parameters of the law, because we understand that if it were not within that, that this

would not be the forum for that consideration.

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And in terms of enforcement, it seems that it would still be open to the general public or to the auto dealerships to complain to the Department of Motor Vehicles if they feel that someone is being unethical or is not within the parameters of the laws.

MR. VANDERGRIFF: But we really have no mechanism in which to enforce. There's no licensing process here, there's no reporting requirement, there's nothing with respect to your proposal that gives the department that kind of assurance that you're saying we could do. We don't have that authority.

Mr. Palacios.

MR. PALACIOS: Yes. Ms. Sobie, I had a couple of questions. I want to address a couple of your comments about the need for these services that your client is providing. I think you made some comments about dealerships are abusive and in some cases they intentionally make it difficult, I think were your words, for a customer not to buy a car -- which I can't comprehend that, but those are your words.

As I see it, in today's market customers have so much information accessible to them, the internet, with a few clicks you can see what every manufacturer's rebates are, you can click on a certain used car and see within

100 miles, 200 miles all the used cars that are on the market at certain prices and so forth. There's a ton of information to anybody with a computer.

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And I get back to, I guess, the services that you're providing. Now, you would now bring a third party in who would be paid, who you say they would be ethical, unlike car dealerships, I guess — to use your words — and they would charge customers a fee to get them a good deal. And again, we get back to car dealers are regulated where we have to have licenses, we have, again, something called competition that keeps them honest. But your client, now, there's no regulation, nobody to verify their qualifications, we don't know if they're even capable of doing what you say they're qualified to do because there's really nobody that regulates them.

I just don't see how this really benefits consumers. Consumers are going to have to pay your client now for something they could very easily do with just a few clicks here and there on a computer, and again, I'm really struggling to see how this really benefits Texas consumers.

MS. SOBIE: And just to clarify, I certainly wasn't suggesting that dealerships are abusive.

MR. PALACIOS: But those are your words, though.

MS. SOBIE: That's actually the statute. The statute uses those words: to protect abusive and unfair practices. So I certainly would not be suggesting that dealerships are abusive. There's a perceived concern, I think, with purchasing automobiles and also large purchases, you know, as you mentioned, people purchasing homes utilize real estate agents, just for example. A vehicle is probably the second largest purchase for most people next to a home.

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And although there are a lot of resources that are potentially available, they're not to the level that necessarily everyone has access to or everyone can find. For instance, elderly individuals, a lot of the elderly population may not have access to the same resources, young people who are involved in their first car purchase may not have the knowledge or wherewithal to find or obtain that information. These are services that are voluntarily sought out, so not everyone purchasing a car will have to use the services or our client or someone, it's just a service that is offered to the public if for one reason or another they feel like they need assistance and they would like to compensate someone to assist them with this large purchase.

Now, in terms of the ethics, I was just indicating that our client is, in fact, ethical. Now, I

understand there may be other people who want to provide these services who may not be. I think that the Enforcement provisions would protect against that. Our client does have a general distinguishing number and a workplace and insurance and all the licensing and protections in place.

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MR. VANDERGRIFF: But that's for their business that they operate, not necessarily for this particular business.

Mr. Herring, did you have a comment?

MR. HERRING: I did. The requester was very specific in the request, and I sort of feel we're going a little bit afield here, because the request made the suggestion which is it's in the board's purview to say that what this activity is is not brokering, and the requester listed reasons why they should consider it not to be brokering, and so we could say you could do this behavior because we're deeming it not brokering. However, we got into a discussion about the pros and cons of brokering, and basically, the requester is saying that brokering should be allowed for these reasons.

As has been pointed out, brokering is against the law, This is not the correct forum to discuss whether we should change that or not. I'll just sort of say that all the players on the field right now are licensed, and

to me it would be inappropriate to bring in, allow somebody unlicensed in the process, and that's how the consumers are protected because all the players currently are licensed.

I'll point out that the great State of Alaska allows for automobile brokers, or allows for people to have a broker who is called a buyer's agent and they are licensed. So again, it's a process in which everybody is licensed. That might be something worth discussing and some change worth making, but that's not something we're able to do or able to even contemplate here today. The question is whether or not the behavior that has been proposed falls into some type of exception from brokering, and I say it clearly does not.

MR. VANDERGRIFF: Well, I appreciate that. I think that the line of questioning, though, has been from the board to get to that very point, that we are not a legislative body. The legislature is the proper forum in which to change the law to allow for brokering, and then we do not issue or have the ability, based on the request, to issue licenses or hold people accountable under the current limitations that we have. So that's a dilemma, and so that's why, certainly from my perspective, and I think other board members are looking to you to provide us how do we, from our perspective, protect the public in

this process. It's not just about allowing a service to provide some service, it's also regulating that service, and how do we do that. Mr. Herring rightly points out that everybody in the process at the moment is licensed and there is some mechanism by which to hold them accountable.

You've pointed out yourself your client is licensed as a dealer, an independent dealer, and therefore is accountable for that business, and I think I pointed that in early questioning as well, but we don't have that ability here.

Mr. Walker.

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MR. WALKER: I didn't understand. Your client is actually a dealer?

MS. SOBIE: Our client holds a license as a used car dealer.

MR. VANDERGRIFF: They're not saying that that dealership would run this business. As I understood it, it would be a separate business, but you're just pointing out they're familiar with the business and held accountable in their business.

MS. SOBIE: It's one and the same, because the services that this particular client provides relates to selection and purchase of vehicles, so wanted to expand the scope to also assist the buyers with the purchase of

new vehicles in addition to the used vehicles.

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MR. WALKER: Well, I personally think that we have a statute and a law that says you can't broker. I think the question before us today is what your client wants to do, is it brokering, and you're asking for us to give you an opinion on that, and by definition, we can reread it again but by definition, if somebody is being paid in order to buy cars for somebody by either the purchasing side or the selling side, that's the definition of brokering.

And so my personal opinion would be, and I'd like to make a motion -- do we need a motion on this?

MR. VANDERGRIFF: We can certainly take up the motion. I also do want to note that, of course, it's the board's pleasure but we do have Karen Phillips from the Texas Automobile Dealers Association who is here to speak and answer questions against the proposal. So if you'd like to hear anything from Ms. Phillips, you certainly have that opportunity. If not, that's fine too.

MR. WALKER: I'd like to make a motion that we stay that what you're asking for is brokering and that the statute is plain and clear in its interpretation in the books that it is against the law in the State of Texas, and that we not accept this as not a brokering operation.

MR. VANDERGRIFF: Are you by definition also

basically saying that we do have the ability and want to issue a formal opinion here, but you're rejecting the request is what you're, in effect, doing.

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MR. WALKER: I'm rejecting the request that we interpret that it is not brokering what they're doing.

And my interpretation would be plainly that they are asking for the ability to broker cars in the State of Texas under their interpretation.

MR. VANDERGRIFF: And are you in line with the proposed option, I believe it was option 3?

MR. WALKER: Where are the options?

MR. VANDERGRIFF: Option 3 would be the last one, right before the tab. Or option 2, I guess, actually is the option. This is part of the process, as I said, merits the board really having a chance to contemplate.

As we bring forward future formal opinion requests, I would think that we would take this language under advisement and have the opportunity to think that through and bring it back at the next meeting.

MR. WALKER: Well, do we want to write a formal opinion, or are they asking for an opinion from the board?

MR. VANDERGRIFF: They are asking for an opinion, and again, my preference would be that we take the time to contemplate that opinion and write that opinion. The staff has provided us with an example, but

you're reading it right at this moment and we may or may not agree with the exact wording of the staff or maybe think there needs to be something more encompassing on this issue, because we are having the opportunity to basically state an opinion relative to the specific request and the brokering law that it impacts.

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MR. PALACIOS: Mr. Chairman, I'm ready to proceed. If we're waiting for clarification on the wording of our opinion, but I concur with Board Member Walker, and I believe clearly this is in violation of current statute and I'm ready to render a decision now on that. But are we looking for wording?

MR. VANDERGRIFF: You have an option from the staff, but this has not been something the board -- as a typical body like this, you would have the opportunity to contemplate if there was something else you wanted to suggest be put in here, and so at the moment you're pretty pressed for time to be able to do that. I'm fine with proceeding, but I'm just making sure the board understands that you do have that potential.

MR. PALACIOS: I would second Board Member Walker's motion.

MR. VANDERGRIFF: And no indication, by the way, I have no answer to my question -- I am sure that Ms. Phillips is happy not to have to come up, but at the same

time, if you wish to hear from her at any point, you 1 certainly have that option since she had a card filed. Okay. We have a motion from Board Member 3 Walker and a second from Board Member Palacios. Do we 4 have any further discussion? 5 6 (No response.) 7 MR. VANDERGRIFF: Please raise your right hand 8 in support of the motion. 9 (No response.) MR. VANDERGRIFF: The motion carries 10 unanimously. 11 Thank you, Ms. Sobie, for being here. 12 13 MS. SOBIE: So just to clarify, is the board accepting one of these proposed opinions? 14 MR. VANDERGRIFF: My belief is that we're 15 16 accepting the more detailed letter that the staff has proposed that indicates that this particular client 17 service is brokering and is not acceptable for the reasons 18 19 posed, so it's this two-page letter. 20 MS. SOBIE: Okay. And then there was one other question, I'm not sure if this is within the purview of 21 22 the board at this moment, but as an alternative proposal, our client wanted an opinion on whether the client can 2.3 24 assist buyers with the negotiation process without

charging them a fee, if that would be within the anti-

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brokering provisions.

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MR. VANDERGRIFF: Again, that's one of those things that I've repeated myself like a broken record, of having a little additional time to study that. I think we'd be happy to come back to you on that point.

MR. BARNWELL: Was that in your original request for a formal opinion as an alternative?

MS. SOBIE: That would be --

MR. BARNWELL: Or is this a new opinion?

MS. SOBIE: It's not necessarily an alternative, it's just an alternative service now that the board has, in fact, found that.

MR. BARNWELL: I didn't see that in the original petition.

MR. HERRING: It was not. I'd like to just point out that this is a person that has an independent dealer's license, they can sell used vehicles to anybody that they want. Anybody can come to them and talk to them about what kind of car I need, and if he can talk those people into paying for that service, that's perfectly fine, but the question is when we go into new cars, once a client or a prospective buyer approaches them, they can have all the talks they want about what kind, color and car that you need and they can negotiate with them directly about buying any used car that that dealer could

obtain for them. So he's able to do this. The question is can he do it for new cars.

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MR. BARNWELL: Mr. Herring, I'm not sure I agree with your position on that. I'd like to have that fleshed out. And since we're talking about a formal opinion here today and turning this particular thing down, I think we ought to limit what we're talking about to that because where you're going with that is not where I'm thinking it needs to go, and that's going to require some further discussion in the future, I think.

MR. HERRING: I apologize. Again, that was not the question that was presented in the opinion.

MR. VANDERGRIFF: And therein lies the point of having a little more deliberative time on things to figure the ramifications. The formal opinion process, obviously, this board has talked about that during the time we've been here as a board, but this is the first major request. We've had a couple that have come close but have been withdrawn, and it's also, I think, within the parameters of the board to think about how this request impacts other things. For example, your question relative to merely providing the service for free, that's in terms of how that's done, that is a question for this board in this process. The formal opinion process is not quite the same thing as a cut-and-dried decision coming forward in a

presented case before us, it is a much broader 1 contemplated process for the board. 2 3 MR. WALKER: I sure wouldn't want to hinder my ability to go down with my son -- which I did this week --4 and bought a new car and I didn't charge him for that 5 6 service, I was there just to assist him buying the car. 7 MR. INGRAM: Good thing you didn't. 8 (General laughter.) MR. VANDERGRIFF: We can come back with that 9 10 particular point that you've raised. MS. SOBIE: Okay. So would that be on the 11 12 agenda for the next meeting? 13 MR. VANDERGRIFF: It could be, yes. We'll consult with Mr. Herring. 14 15 MS. SOBIE: Thank you. 16 MR. VANDERGRIFF: Thank you very much. With that, we're moving on to item number 5 on 17 our agenda. These are resolutions for individual 18 19 consideration. 20 And I will give the audience and the board notice that we've been at it for about two hours, I'm not 21 22 sure how long number 5 and 6.A and B will go, but depending on how long those go, we probably will take a 2.3 24 break after we get through with the completion of 6.B, a

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short break.

MS. HEIKKILA: Mr. Chairman, members, for the record, my name is Dawn Heikkila. I'm the chief operating officer for the Texas Department of Motor Vehicles. I have before you today a request to amend Chapter 208.7 of the Administrative Code, Title 43, pertaining to a rule dealing with the transition of vacant positions.

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At the September board meeting, staff was instructed by the board to begin the process of repealing this rule. The rule no longer serves a business purpose. The rule addressed the hiring process for filling administrative support positions when the agency was created with a common referred to term "first consideration." This rule allowed consideration to be given to TxDOT employees who were employed on September 1, 2009 or the immediate 12 months before the agency was created first consideration for vacancies that created administrative support positions such as HR, finance and general support positions.

The provision of first consideration was hard-coded into our workforce management system, HR Online, by TxDOT when the agency was created. By July 1 of 2011, these initial positions had been filled and the provision was no longer part of the hiring process. TxDOT had removed the provision from the hard-coding of the computer application in our workforce management system on November

4, 2011, and for this reason we're requesting that this 1 2 particular rule be repealed. 3 The proposed amendment deletes the unnecessary rule provision. There's no fiscal impacts or implications 4 related to the repeal, and comments on the proposed rule 5 6 repeal will be accepted through December 27 of 2012. And staff is recommending that the board post the amendment to 7 8 repeal this rule for public comment. 9 MR. WALKER: I so move that we accept the recommendation of staff to remove the amendment. 10 MR. PALACIOS: Second. 11 MR. VANDERGRIFF: We have a motion and second. 12 13 I do want to note and appreciate the efforts of Board Member Johnson to bring this to the department's 14 15 attention, and the prompt action, also, of the department 16 and Ms. Heikkila to address it, so thank you. We have a motion and a second. 17 MR. INGRAM: Just to clarify, Ms. Heikkila, the 18 19 motion is to approve the publication of the proposed rules. Correct? 20 MS. HEIKKILA: It's to approve the publication 21 22 of the repeal. 2.3 MR. INGRAM: The repeal, yes. 24 MR. VANDERGRIFF: So we have a motion and a 25 second to approve the publication. Do we have any other

discussion?

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2 (No response.)

MR. VANDERGRIFF: Seeing none, please raise your right hand in support of the motion.

(A show of hands.)

MR. VANDERGRIFF: The motion carries unanimously of the board members present.

The next item is 5.B, Motor Carrier, Mr. Archer.

MR. ARCHER: Good morning, Mr. Chair and board members. For the record, my name is Jimmy Archer, and I am the director of the Motor Carrier Division.

For the board's consideration, this is the proposed repeal of 43 Texas Administrative Code, 218.63, Annual Report, which requires household goods carriers to submit an annual report to the department. Texas DMV is proposing, with the concurrence of the Texas Motor Transportation Association, the repeal of Section 281.63 requiring the requirement for household goods carriers to submit this report.

This rule requires every household goods carrier to file the annual report which must include the total number of shipments, total number of claims that resulted in mediation coordinated by the department, and the total number of claims resolved after a lawsuit was

filed. This is an annual self-report by the carriers of household goods. The annual report rule was intended to provide shippers information regarding a household goods carrier's claim history in order to help shippers choose a carrier when moving household goods. The reports are received and stored in the Enforcement Division.

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The department does not verify the information contained in the report, nor is any further action taken regarding the report. Additionally, staff has not received any open requests for information contained in the report, nor has there been any further action taken regarding the report.

The department currently provides online information for the public about carriers through the Motor Carrier Complaint Management System. Through the complaint management system the public can file complaints involving motor carriers, check the status of the complaint and view the complaint history of a motor carrier.

Another department rule, 218.55, Information for Shippers, requires a household goods carrier operating in intrastate commerce in Texas to provide the shipper a copy of the department's information sheet entitled "Your Rights and Responsibilities When You in Texas." The information sheet informs shippers that they can access a

searchable database to verify whether a mover is properly registered, they can contact the department's Enforcement Division to obtain information regarding a mover's complaint history, and they may contact the Better Business Bureau for additional information regarding a household goods carrier. This information sheet is now available from the department and is available on the department's website.

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The Enforcement Division inspectors, through
Texas Transportation Code, Chapter 643, and other
department rules have access to all records maintained by
carriers if the inspectors need to conduct investigations,
including claim records and moving service contracts.

To recap, there are no longer any good business reasons to require this report, it's a self-report by household goods motor carriers, there are faster ways for shippers to obtain more current information than the information in the annual report required by this rule, the department has authority to access the records it needs to conduct any investigation, and the department does not use the annual reports. Therefore, it is proposed that Section 218.63 be repealed. I respectfully request that the board consider the repeal of Section 218.63 and amendment to 218.50 to eliminate the reference to this rule.

Does the board have any questions? 1 MR. INGRAM: Mr. Chairman, if there's no 2 questions from the board, I'd like to make a motion that 3 we approve the resolution approving the publication of 4 those amendments and the repeal. 5 6 MR. WALKER: I second. 7 MR. VANDERGRIFF: We have a motion from 8 Director Ingram and a second from Director Walker. no discussion, please raise your right hand in support of 9 the motion. 10 (A show of hands.) 11 MR. VANDERGRIFF: The motion carries 12 13 unanimously. Thank you. The next item is actually a combination. We're 14 15 going to take up item 6.B before we take up item 5.C. 16 They are related, and I think, Mr. Elliston, you're up on both. 17 MR. ELLISTON: Good morning, Mr. Chairman and 18 19 members. For the record, my name is Randy Elliston, and I'm the director of the Vehicle Titles and Registration 20 Division. 21 22 With your indulgence, Mr. Chairman, I'd like to take up first 6.A, if that's okay, as that will then flow 2.3 24 into 5.C.

ON THE RECORD REPORTING (512) 450-0342

At the March 2012 meeting of the Texas

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Department of Motor Vehicles Board of Directors, the board created the Tax Assessor-Collector Special Advisory

Committee on Standards. The creation of this committee was in compliance with House Bill 2357 out of the 82nd

Legislative Session which created Transportation Code

520.004 that required the department to establish standards for uniformity and service quality for the titling and registration of vehicles by the counties.

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The committee was comprised of two Texas

Department of Motor Vehicles board members, Member Johnson and Member Palacios, and six tax assessor-collectors and was charged with identifying standards for the processing of title and registration related transactions. These committee members were also joined by Texas DMV staff and industry representatives from the Texas Automobile Dealers Association and the Texas Independent Automobile Dealers Association.

Through the leadership of Board Member Johnson, the committee format was established in which meetings were conducted via conference call. The committee and stakeholders across the state worked to identify issues that needed to be clarified or standardized and provided feedback to the department's management so those issues could be addressed by the committee.

The agency originally brought 16 items to the

committee for consideration. During the following six months and five conference call meetings, that list grew to 30 items. The last meeting of the Tax Assessor—Collector Special Advisory Committee on Standards was held on September 6, 2012, at which time a consensus was reached on all items the committee had before it for consideration. These items considered by the committee covered a wide range of topics to include things such as consistency and charging of proper fees that are set in statute and the required training for new tax assessor—collector employees and new tax assessor—collectors as they are elected or appointed into their positions.

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As you know, one of the primary goals of the committee was to identify and standardize practices and procedures so that the motoring public has a similar experience when they go in to do business with a tax assessor-collector no matter what county that they may be in, whether it's the charging of fees or how the process is conducted.

Even though there is still work to be done, we believe the committee has made good progress in meeting our goals. As a result of the committee's work, a number of registration and title bulletins and other communications have been communicated to all 254 counties and the DMV regional service centers to clarify the

procedures and set standards for items the committee has identified. We know this will be living committee and we'll continue to work with Member Johnson to establish additional standards as may be needed in the future.

That's all I have on the committee. If you would allow me, I'd like to move on into the rule because it ties into it.

MR. VANDERGRIFF: Please.

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MR. ELLISTON: As a result of the work of the committee, you have before you proposed amendments for posting for public comment to Administrative Rule 217.3 regarding Motor Vehicle Titles, and 217.22 regarding Motor Vehicle Registration.

These rules, if adopted after posting for public comment, would implement the consensus of the committee, as well as clarification of existing rule.

Amendments suggested by the committee include requiring a tax assessor-collector to hold county hearings for a person who had been refused a title, had a title revoked or had a title suspended. The amendments also require new county employees or new county tax assessor-collectors to complete training. Consistency in charging fees was also added to the charge. The amendments explain that if a person has been arrested or cited for operation of a vehicle without registration, then in addition to the 20

percent penalty the full annual registration fee will be collected without change to the registration month in accordance with statute.

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A subsection is also added that requires an applicant for farm plates to provide proof of eligibility to get farm plates. If adopted, this section would require that an application for farm plates would be required to be accompanied by a copy of the applicant's Texas agriculture or timber registration card issued by the Texas Comptroller of Public Accounts. To be acceptable, the card must be current, be legible, contain a registration number and be in the name of the person or d/b/a in which the vehicle will be registered. During this process we did reach out to the Texas Southwest Cattle Raisers Association and the Texas Farm Bureau and received positive response from them regarding this rule.

We do recommend that these amendments be published for public comment at this time. Be happy to answer any questions that you may have.

MR. VANDERGRIFF: Mr. Ingram.

MR. INGRAM: Mr. Elliston, so this committee, it was a consensus committee, the ones that you have now that you want to publish was it unanimous on the committee or was it majority, or how was that working?

MR. ELLISTON: The ones that you have before

you for rulemaking, we did have a consensus. I'm trying to remember, I don't think we had any dissenting persons regarding these. A number of these issues are actually in current statute, but for clarification are really just to remind the tax assessor-collectors of what those statutes are and how they will proceed is another reason for having these published. As I stated earlier, there were a number of Registration and Title Bulletins — which are our formal means of communicating with tax assessor-collectors on policy and procedures — sent out to all of the tax assessor-collectors so that everybody would be on the same page. But I think the answer to your question is yes, we had consensus on these.

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MR. VANDERGRIFF: I think there will be more rules to come that the TACs will deal with in an advisory capacity.

MR. ELLISTON: There were actually some items that were presented that will require some statutory change and those types of things, so those were set aside for that purpose, that were not within the purview of the committee. But everything that we could rule on, we did have consensus on.

MR. INGRAM: Okay.

MR. VANDERGRIFF: Unless there are further questions, I'd be pleased to entertain a motion.

MR. INGRAM: I'll move that approve the 1 resolution to approve publication of the proposed 2 amendments to Sections 217.3 and 217.22. 3 MR. WALKER: I'll second. 4 MR. VANDERGRIFF: We have a motion by Director 5 6 Ingram, a second by Director Walker. Any discussion? 7 (No response.) MR. VANDERGRIFF: Please raise your right hand 8 in support of the motion to publish. 9 10 (A show of hands.) MR. PALACIOS: Mr. Chairman, I'd like to 11 commend Mr. Elliston for your work with the TACs, and 12 13 Board Member Johnson as well. We've made some headway but we have a long way to go still toward standardizing 14 15 processes. I mean, I'm seeing there's a total disparity 16 amongst the counties throughout Texas, not much 17 consistency, and the sooner we can work towards getting standardized policies, processes and controls in place, 18 19 we're going to be much better off. 20 MR. ELLISTON: I fully agree with you. I think we did make some significant headway but we still have a 21 22 lot of work to do, I agree with that, and we'll continue to work in that direction. 2.3 24 MR. VANDERGRIFF: Thank you, Mr. Elliston. Appreciate it. 25

And thank you again, too, Mr. Palacios, for your work on that committee, as well, and Ms. Johnson.

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I do want to make note that we're zipping right along so we'll see how long this takes, but look to include -- I said before we'd break after 6.B but we'll now break after 6.C, so we'll let legislative come up as well. But the next item on our agenda is 6.B, which is approval for specialty plate designs by Mr. Elliston.

MR. ELLISTON: Again for the record, my name is Randy Elliston. I'm the director of the Vehicle Titles and Registration Division.

The state's specialty plate vendor, My Plates, is requesting approval of three specialty plate designs, each of which are included in your briefing book. The plates being proposed are for Arizona State University, Midland High School, and Virginia Tech Alumni. The applications for these plates have been reviewed and certified complete. The plate designs, as presented, meet all agency and legislative requirements. The agency requests your consideration for approval of these plates at this time.

 $$\operatorname{MR.}$$  WALKER: I so move that we accept the proposed plates.

MR. INGRAM: Second.

MR. VANDERGRIFF: We have a motion and a

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second. Do we have any discussion? 1 2 (No response.) 3 MR. VANDERGRIFF: I just want to note how universally supported and appreciated the program is by 4 the legislature, and Mr. Steve Farrar, who is the 5 6 president of the company, is here in the audience in case anyone has any questions. Seeing no questions for him --7 8 MR. WALKER: I've got a guestion. 9 MR. VANDERGRIFF: All right. Sorry, Steve, I pointed you out. 10 (General laughter.) 11 MR. WALKER: How many more colleges do we have 12 13 to go? MR. VANDERGRIFF: Could you please come up and 14 15 identify yourself for the record? MR. FARRAR: I will fill out a form at the 16 conclusion of this. 17 For the record, my name is Steve Farrar, 18 19 president of My Plates, trading in Texas. 20 Mr. Walker, it's a very good question. how many new college plates, I really can't answer that 21 other than the fact that we are limiting the number of 22 plates that we're bringing to the market at this stage. 23 24 We're really concentrating our efforts on the plates that we have and looking at maximizing those plates in the 25

market. They really do have to meet certain requirements that we're looking for in the numbers of alumni, as well as projected sales, before we're committed to then sponsoring those plates and bringing them before the board for approval.

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Walker, you asked me a question some weeks back. I assured you at the time that we would contact Odessa and Permian. We have done that. They are actually in process of the application at the moment. We envisage that we will be bringing those plates to the board, possibly to the DMV with an application in the coming weeks.

MR. WALKER: Should have brought them both out at the same time. You could have pitted those two against each other, that's a bitter rivalry.

MR. FARRAR: The good news is that once it's approved, Mr. Walker, we can actually hold that plate off from release, and then wait for the other ones to be approved and bring them all to the market at the same time.

MR. VANDERGRIFF: I do want to note that I would assume Virginia Tech, because it's now a member of the Big 12, has renewed interest in the state.

MR. FARRAR: It's West Virginia is a member of the Big 12; Virginia Tech is not.

MR. VANDERGRIFF: I'm sorry. Virginia Tech is
not. I apologize. That shows my football knowledge. I
was trying to make a joke about the departure of the
Aggies to the SEC.

(General laughter.)

MR. VANDERGRIFF: With that, I'd be pleased to
raise your right hand in support of the motion in support

(A show of hands: Barnwell, Ingram, Vandergriff and Walker.)

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of the plates.

MR. VANDERGRIFF: All those opposed.

(A show of hands: Palacios.)

MR. VANDERGRIFF: The motion carries four to one. Thank you very much. Thank you, Mr. Farrar.

With that, we're at item 6.C on the legislative priorities. Mr. Kuntz.

MR. KUNTZ: Jeremiah Kuntz, the director of Government and Strategic Communications.

I'm going to take up the first item which is our study, our joint study with the Department of Public Safety. SB 197 from the 82nd Legislative Session required that the Texas Department of Public Safety and TxDMV conduct a study regarding the feasibility of and best practices for using an electronic motor vehicle inspection system to consolidate the inspection and registration of

motor vehicles in the state. That report is due to the legislature on December 1.

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We met with DPS numerous times to discuss this study. They actually took the lead on this one in preparing the study that you see today. We offered consultation to them throughout the process, and basically what this study does is it walks through and identifies three options. All three of those options would require synchronizing registration and inspection for a vehicle so that those would be done simultaneously. The first option would basically eliminate both stickers, the second option would have an inspection sticker and not a registration sticker, the third option being a registration sticker and no inspection sticker.

The report basically goes through and identifies the process that would be followed for each of those options that are out there, a discussion of the option, and then opportunities and risks associated with each of the options. It does not make any recommendations for one option over the other, we're merely just reporting that there is an option to consolidate these functions and synchronize registration and inspection for vehicles.

This is really just a briefing to the board.

Because it was a joint study, I don't believe that we're going to need action from the board. The charge was for

the departments to get together, but we wanted to make you aware of it before we report back to the legislature the findings that we have from the report.

MR. VANDERGRIFF: And certainly the board is free to ask questions of Mr. Kuntz or the department about it. Mr. Palacios.

MR. PALACIOS: I do have a couple of questions. I think this is a long time coming and I appreciate your efforts in moving this forward. Can you kind of walk me through this. You talked about the three options, eliminating both stickers and then the other is eliminating one or the other.

MR. KUNTZ: Correct.

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MR. PALACIOS: And I read through this, I just want some clarification. So I guess at the time of purchase, then, both the registration and inspection sticker or the inspection would occur and they'd be renewed simultaneously going forward?

MR. KUNTZ: Correct, yes, sir. Right now the way the registration works is that once you have an assigned date for a vehicle, that date stays with that vehicle through its life unless it goes out of service for any number of reasons. There are a couple of exceptions to that. With inspection, it's done annually as well, but there's what we refer to as a one-month grace period in

the inspection process. Those two things do not necessarily have to happen at the exact same time, so there are vehicles that have a different inspection than a registration, and as that vehicle goes along, some people will push that inspection for a month because of the grace period and actually get 13 months out of an inspection.

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This would synchronize those to happen at the same time, and basically, in all of these proposals there would be a 90-day window that you would need to get your inspection done and then have your registration renewed within those 90 days of one another so that they're synced up with one another. In the beginning, that would take some time getting all the vehicles synchronized up as we move through the process because as vehicles have those different dates, it would take some synchronization, it would take approximately a year to get through all those vehicles and get them all synced up.

MR. PALACIOS: Okay. And again, your time frame, I understand you said you wanted to present this by December 1.

MR. KUNTZ: Correct.

MR. PALACIOS: I guess if it's approved, how soon can we look at having this actually enacted?

MR. KUNTZ: Any of these options would take legislation, so these are just merely a report to the

legislature on options that they could pursue through 1 legislation. 2 3 MR. VANDERGRIFF: It would require a legislator or part of the legislature to take this up. 4 MR. KUNTZ: Correct. And we presented the 5 6 options so that they have three options that they could 7 evaluate whether or not they want to pursue legislation on this. 8 MR. VANDERGRIFF: Mr. Walker, did you have a 9 10 question? MR. WALKER: I think you already answered it. 11 12 My question was this is just a study as was mandated by 13 the legislature, we're going to report the study back to the legislators in the next session, and it would go to a 14 15 statute issue, they would have to take it up. There's no 16 action needed by this board. 17 MR. KUNTZ: No, absolutely. MR. VANDERGRIFF: That's correct. 18 19 MR. PALACIOS: Just a comment on the three options. If we eliminated stickers, how would law 20 enforcement be able to verify just at first glance? 21 MR. KUNTZ: That is one of the risks that's 22 identified in the report. Law enforcement would have 2.3 24 difficulty identifying those vehicles. There are options 25 that some states have looked at using RFID chips or using

license plate readers in the squad cars that would automatically just read the license plate and tell them whether or not the registration and inspection were up. But those are costly systems and they also offer -- that's a risk to the state. It also presents challenges for people that are traveling outside the state, going into other states that require registration. They would not know if that vehicle is registered or not if they don't have technology to scan that vehicle.

Any other questions?

(No response.)

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MR. VANDERGRIFF: Thank you, and you have the next part.

MR. KUNTZ: The next part of my presentation is our legislative recommendations.

In our enabling statutes in Section 1001.025, there is a provision that allows the department to bring forward recommendations to the legislature. The chairman is the person that would be bringing forward those recommendations as laid out in statute. What we have today is a briefing document on some potential recommendations that we could pursue or that the chairman could pursue making recommendations to the legislature on efficiencies or ways to improve the agency's processes and procedures.

The recommendations that we're presenting today, we have presented those to industry stakeholders, we've talked to the county tax assessor-collectors, we've talked to a lot of the associations that we work closely with so that they are aware of the provisions that we're suggesting, so they've seen all of these. We have not received comments back from them. We will continue to work with them leading up to the legislative session as well as during the legislative session. Our intent is to make sure that those groups are satisfied with the recommendations that we're making.

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MR. VANDERGRIFF: If it's appropriate for me, I think it's also appropriate from the standpoint of the legislature that while it's certainly not the same as actual bills being introduced, these concepts have been discussed at that level as well and have had favorable approval.

MR. KUNTZ: Correct.

There are four general concepts that we're looking at: a dedicated account for the agency and a processing and handling fee associated with registration; a general cleanup bill that cleans up some of the provisions from last session as well as makes recommendations on some other efficiencies or improvements to the agency's procedures; a bill that would look at

transferring State Office of Administrative Hearings, or SOAH, hearings back into the agency -- what we're looking at are third party cases where the agency is a third party, those would be warranty performance, dealer dispute cases or termination cases; and then a bill to clean up some provisions relating to the salvage industry.

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During the last legislative session, in working with the salvage industry, it became clear that there was a need to go through the Occupations Code dealing with the salvage provisions, as well as the Transportation Code, to try and clean those provisions up and make some recommendations there. We created a working group utilizing the industry so we had the insurance industry, the salvage industry come in, as well as municipalities and county associations, to talk about recommendations. The recommendations from that work group were consensus based, so we only brought forward those things where everybody was in consensus on.

At the end of this presentation, what I'd be asking is for the board to give a motion that gives the chairman the authority to present this report to the governor, lieutenant governor, speaker and the presiding officers of the legislative committees, the transportation committees in the House and Senate.

If you would like, I can go through the

recommendations, or I can defer to you to ask questions. 1 I'm sure that you have read this, I don't want to belabor 3 the point, but whatever the board's preference is on this. MR. WALKER: I'm not so sure that we need to 4 give him authority to go to the governor. Does he not 5 6 already have that authority? 7 MR. VANDERGRIFF: Yes, but I think as an 8 appropriate matter, I work and represent you as well. MR. PALACIOS: So the recommendation would be 9 10 to give you permission to move this recommendations forward. 11 MR. KUNTZ: Correct. 12 13 MR. VANDERGRIFF: I would like your acknowledgment. 14 MR. INGRAM: I'll make that motion. 15 that the board authorize the chairman to finalize the 16 TxDMV recommendations section of the report, making any 17 necessary changes that are in the best interest of the 18 19 department, and to submit the report to the members of the 20 legislature on behalf of the board. MR. PALACIOS: Second. 21 22 MR. VANDERGRIFF: So we have a motion from Director Ingram, second from Director Palacios. Any 2.3 24 further discussion?

(No response.)

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MR. VANDERGRIFF: Seeing none, please raise your right hand in support of the motion.

(A show of hands.)

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MR. VANDERGRIFF: The motion carries.

We continue to move right along, so I will ask,
Mr. Kuntz, since you're sitting there, I hate to be
jumping out of order, but are you prepared to discuss 7.D?

MR. KUNTZ: I am.

MR. VANDERGRIFF: By the way, when we do take a break, we will take a short break and then go into an executive session, have lunch during that time, so I want to alert that we could be out in executive session for about an hour, so it could be a significant time period.

Go ahead.

MR. KUNTZ: The next agenda item is a briefing on our strategic communications plan. Since the inception of the agency, we've not had a formal strategic communications plan. During the organization assessment that the agency conducted that concluded in July of 2011, there was a recommendation to develop and implement a strategic communications plan. It noted that effective communication is one of the most important elements in successful strategy execution and implementing effective change. A well designed communication plan is developed around internal and external stakeholder groups and a set

of key messages.

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When the Government and Strategic

Communications Division was created in October of last
year, one of the missions of the division was to develop
and execute innovative communication strategies in support
of the division within TxDMV so that staff, consumers,
business partners and other stakeholders were receiving
accurate and consistent information about the agency's
programs and ensuring the highest level of transparency.
This plan is based on the core values established by the
board in the agency's strategic plan. By implementing the
following strategies detailed within the plan, the agency
will help shift its overall culture, resulting in
coordinated and consistent messages focused on exceptional
customer service.

The items that are in the strategic communications plan are: communications tracking, media relations, employee communications, social media, governmental communications, forms and brochures, the website, board meeting communications, executive director communications, and business partner communications.

This plan serves as a framework for all future communication initiatives. My division will play a vital role in implementing these strategies by providing the necessary leadership and expertise to support each

division's role and making communications a fundamental component of the agency's issues and operations.

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This document is a living document so it will be updated. We're looking at updating it biannually so that it would be in line with the agency's strategic communications plan as well.

I an open for any questions.

MR. VANDERGRIFF: I, for one, appreciate the extra effort to do this. Thank you very much for that.

MR. KUNTZ: Absolutely. And I don't believe we need any action on it, this is just a briefing.

MR. VANDERGRIFF: Thank you. I don't see any questions.

We are going to continue with the agenda, at least for now, and we'll take up two more to see how long those two take. Ms. Flores, are you prepared for the monthly financials? Mr. Harbeson, will you be prepared on the default judgments?

MR. HARBESON: Yes, sir.

MR. VANDERGRIFF: You can go first if you prefer to defer.

I'm sorry. Board Member Walker made a good point. Just so the audience does not think I've skipped item 6.D, I have skipped it on purpose; we're going to take that up after executive session. We might get some

of these others, but that's on the TxDMV automation project, so that will be taken up after executive session.

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MS. FLORES: For the record, my name is Linda Flores. I'm the chief financial officer for the agency. And with me today is Michelle Smith. She is the financial analyst in the revenue forecasting unit of Financial Services Division.

Before you today is the financial comparison for the month ending September 30, 2012. The first page in your documentation identifies expenditures versus budget, and we are now reporting FY '12 actuals against FY '13, so you're going to have a year-to-year comparison. For the month of September you can see that we're pretty closely in line with how we performed last September 2011. And as we move forward, you'll see quarter by quarter.

On the revenue side, as you can see, we are again generating over \$100 million in Fund 6 compared to titling approximately 22 vehicles. In Fund 6 the month of September, we are now able to forecast month by month so we're double checking our forecast against our actual performance. And then we've broken it further down between Fund 1 and Fund 6. General Revenue is Fund 1, and Fund 6 is the State Highway Fund. So our forecasts for the State Highway Fund seem to be a little bit better in line, whereas, general revenue still tends to fluctuate

somewhat.

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And the last slide still retains the same financial analysis that we've previously reported for the My Plates where they're estimated to reach their goal in March of 2014 before the contract expires in October. We are also looking at this particular item and we will probably be coming back to you with a new forecast based on some trends that we can now see because that contract has been in place now for a couple of years, so we're seeing some trends, so we'll be coming back to you in the near future with a new analysis.

And that concludes my presentation and I'm available to answer any questions.

MR. VANDERGRIFF: Any questions from the board? I don't see any.

MS. FLORES: Thank you.

MR. VANDERGRIFF: Okay. Thank you very much.

Mr. Harbeson.

MR. HARBESON: May I proceed?

MR. VANDERGRIFF: Yes, please proceed.

MR. HARBESON: I'm Bill Harbeson. I'm the director of the Enforcement Division and also the interim director of the Motor Vehicle Division.

The board had concerns regarding unpaid civil penalties that resulted out of our default orders, and

again I stress these are default cases where the respondent did not reply to the petition and did not otherwise participate in the case and an order was issued ordering them to pay civil penalties. I've done an analysis of the problem, I've done some research into what our alternatives are, and I'm also going to present to you today what steps we have taken and are taking in this matter.

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First of all, looking historically at what we've done in the Enforcement Division, since 1985, at least as far back as I could go, there's never been any action to pursue these unpaid civil penalties arising out of defaults. A few of these, with the exception that when an applicant came back to us or a licensee would renew with us, if there was an existing civil penalty, we then would stop the licensing process and make a referral to Enforcement to go after that unpaid civil penalty. So some of this money has been collected over the years but it would be only of people continuing in the industry.

Since 2008 there's been 470 cases with unpaid civil penalties. The amount due from that is \$2.1 million. Of those 470 cases, 134 of those respondents, people owing us money, were corporations -- excuse me -- 190 were corporations, and of those 190 corporations we've looked at their status and 134, or 70 percent of them, are

no longer licensed by the Secretary of State, i.e., they're no longer in business with us in Texas.

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Of the 470 cases, 91 percent are under \$10,000, and that's significant. It will become more significant in a few minutes when I talk about what actions we possibly can take. Of the 42 cases that are over \$10,000 since 2008, only two involve licensed corporations, people still in business. One of those cases the board heard around three months ago and we're pursuing a disciplinary action at this point to go after that license because he has not paid the civil penalty.

The options for us are as follows. The OAG, the Office of Attorney General, will take any case over \$1,000. If they take a case over \$1,000 and it's under \$10,000, they will issue a letter. To take the case, we have to have issued two letters, so we'll issue two letters, the Attorney General will then issue a demand letter. They will file suit if the amount is over \$10,000.

Another alternative we've discovered which may be more practical in some cases is that the Comptroller will issue a hold warrant, they will not issue a refund to a respondent if we have gone on file with them as showing that this person owes us money. So as long as they're on record as owing the agency or any agency money, the

Comptroller will not issue them a check if there's a refund or some other payment coming out of the Comptroller.

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The agency itself is taking a number of steps which I'll continue with right now. First of all, we've reemphasized our process of looking at every applicant and every renewal to assure that they do not have money owed to us out of a civil penalty case. Again, over the years that's been our most successful way of making money or collecting this money is through catching people coming back into the industry or continuing in the industry when they owe us money. To be frank, in a lot of these cases they just never answered the mail and that's the first time they find out about owing us money is when they come in for renewal. We will work with them to continue in business and get the money from them at that point.

The licensing specialists have been issued a script that we formulated that when they discover one of these licensees or applicants that owe us money, they're informed of the fact the debt is owed and they're then referred to the Enforcement Division where the attorney will discuss the facts and explain the case. In the past this would hold up the licensing process because arguments would arise, so giving that to the attorneys to explain the debt, where it came from and what procedural steps the

licensee or applicant must now take.

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We are going back over the list of all the people that owe us money and assuring that they're not licensed or have come back to us in another form and pursuing those cases through enforcement actions if they haven't already been filed. We have a number of enforcement actions we've been filing all along for contempt when civil penalties are unpaid.

Effective immediately, after the last meeting, actually, the enforcement attorneys are retaining the case open or they're keeping it open and sending out the two demand letters that are required by both the Attorney General and the Comptroller to accept cases from us. Those are the two procedural requirements for those agencies to take a collection action and pursue it themselves. We've not been doing that and we're now doing it.

We also taking the rest of the cases, going back to 2008, and having administrative personnel issue the two letters to set those cases up for referral to the AG or the Comptroller, as appropriate, based on the amount due and what our analysis is of the collectability of that money. We're working with Finance to get the proper codes in place at the Comptroller so that we can set up these warrant holds so that money, again, that's owed by the

Comptroller to one of these respondents will not be paid and it will come to the agency instead.

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And finally, we plan to continue our analysis of the over \$10,000 cases and when we see that it is possibly collectable, we're going to go ahead and make the referral to the AG and ask them to pursue the collection matter. We have one of those cases currently that we're setting up to refer to them for collection action.

So are there any questions?

MR. PALACIOS: Yes, Mr. Harbeson, I have a couple of questions.

First off, on the 190 corporations that are licensees, are you looking at the corporation or the major shareholder within the corporation when you're doing your collections? Because they could obviously open up just different corporations, and they could default on one corporation and open up other corporations that are still in business. So are we going after the shareholders or the corporation?

MR. HARBESON: We would only be going after a corporation if it's alive. Now, the 190 licensees that were corporations, 134 of those have forfeited their charter or it has been forfeited or canceled by the Secretary of State.

My experience in the collection business, which

I was in before joining the agency, it's pretty difficult to go back behind the corporate veil and go after those shareholders unless we had maybe another good corporation or the amount of money justified that type of legal work. So to answer your question, no, traditionally we would not look behind at who the shareholders were of a corporation if the debt was indeed owed by the corporation.

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MR. PALACIOS: Okay. So is there any way we could do that where we actually hold individuals accountable? And I don't know the law there, but it seems to me it's very easy to usurp this through this process.

MR. HARBESON: Well, it's really not that easy in Texas. The easiest way to get to the shareholders would be if that forfeiture occurred before the debt was incurred. In other words, if they had been forfeited by the Secretary of State and we were then dealing, at that point going forward, with individuals, we could possibly go after the shareholders because they're no longer protected by the corporate entity.

MR. PALACIOS: Okay. And the other question I had, you said that we normally can't collect until they renew their license, so essentially, then, they can go a year and so forth without paying the fee. Is there any way to revoke the license?

MR. HARBESON: Yes, sir. I mean, there is, and that's where we're filing contempt actions, and that's why I said is what we're doing is going back and checking and making sure if we do have an active licensee that owes us money, we're initiating a contempt action. How we did this traditionally was we were waiting and letting the licensing specialists discover this. What we're doing now is going back and looking at the list of who is still licensed that owes us money and initiating a disciplinary action for contempt.

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MR. INGRAM: So if you have a shareholder that owes us money or a penalty/fine, the company goes out of business, he applies for a new license, it's going to be another corporation, that's going to be caught by licensing that that individual was part of another corporation?

MR. HARBESON: It actually depends on what layer of the corporation. We currently are checking the first layer of shareholders in a corporation and that check is being currently done. So if he had been licensed by us as an individual and comes back as a corporate shareholder, we would catch that. The law is not that certain for us there because what we're really talking about is whether they're fit and what we're doing is looking at our orders and making sure they say that if the

penalty is not paid by the corporation, then we're to stop any further licensing or continue to collect the debt against any shareholders, owners, managers of that corporation that owes the debt. And the same would be the reverse for an individual that owed us a debt, we would try to stop the license or we would initiate an action to stop the license if they came back as a director, shareholder or manager of a new corporate licensee.

MR. INGRAM: And you'd have to catch that and some of these structures can be quite complex.

MR. HARBESON: Yes, sir.

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MR. INGRAM: And so therein lies the problem.

MR. HARBESON: And that's the difficulty in the balancing between how far do we dig at the time of licensing. I mean, in all honesty, it's fairly easy for you to just have your wife come in, and we're dealing with a case like that right now where the spouse who has absolutely nothing to do with the car business, never has other than being a community property interest in that business, is now coming to us as the licensee. Now, the good news is our investigators went by this licensed location, discovered the debtor to still be working there as a manager, and we're using that argument to go after her license. She's, of course, not very happy because she's the subject of the case.

MR. VANDERGRIFF: Mr. Walker. 1 2 MR. WALKER: We approve every month agreed orders, default orders, consent orders, and all these have 3 fines attached to them. And what we're talking about 4 right now, is this only the defaulted items, or are we 5 6 talking also in addition to the agreed orders? 7 MR. HARBESON: Everything on the consent agenda 8 has been paid and the money is in the bank. MR. WALKER: It's just the defaults we're 9 talking about where the issue is. 10 MR. HARBESON: Yes, sir. Those items that are 11 called the motions for disposition based on default. 12 13 MR. WALKER: Okay. I'm not going to name the company, but let's just take number 5 on our agenda today, 14 15 and they failed to timely transfer and pay sales tax. 16 MR. HARBESON: Yes, sir. 17 MR. WALKER: So they sold a car and maybe didn't collect sales tax, or they sold a car and they 18 19 collected the sales tax, they pocketed the money, and now we're letting them walk away, basically, without 20 collecting it if they're not a viable deal? Isn't there a 21 22 criminal offense here? MR. HARBESON: Yes, sir, but that allegation 2.3

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may mean a lot of things. It's very broadly drafted, and

the key would be timely. It's a violation if you don't do

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it in the time specified by law, and that happens a lot. So even though the state eventually got their money, that happens a lot. So everybody got paid, title got transferred, but they didn't meet the time requirements as required by the law. Now, if no one got the money, no one ever got their title, we'd probably be doing something differently with them -- in other words, if they ran with all the money.

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MR. WALKER: And I talked to Linda about this yesterday a little bit, she's going to start tracking so that the board knows, I think, and show all these fines on the ledger on the financial that it's a receivable that's owed to the agency or the state and will track how much is paid. But is there not maybe a better way to build a mousetrap such that maybe we could legislatively require a bond be posted of some kind and we could go against a bond to collect the fines.

MR. HARBESON: I don't know the answer to that.

I mean, that would be a bond in addition to the current
bond which essentially guarantees transfer of title by a
dealer.

MR. BARNWELL: How much is that bond?

MR. HARBESON: Twenty-five thousand.

MR. BARNWELL: And is it legislatively limited, the effect of that bond or the ability to levy against

1	that bond is limited to failure to transfer title?
2	MR. HARBESON: I believe it is, but I'd have to
3	get back and verify that. I am fairly certain that it's
4	limited to specific use and that being the guarantee of
5	transfer of title by a licensed dealer.
6	MR. BARNWELL: So if that's the case it could
7	be potentially legislatively amended to include penalties
8	for failure to comply with other requirements and
9	regulations of the DMV, potentially.
10	MR. HARBESON: And the question is whether that
11	\$25,000 would go far enough.
12	MR. BARNWELL: Most of your penalties are
13	below.
14	MR. HARBESON: Yes, sir.
15	MR. BARNWELL: Ninety-one percent are under
16	\$10,000?
17	MR. HARBESON: That's correct.
18	MR. BARNWELL: Okay.
19	MR. VANDERGRIFF: One question. Do you have
20	any idea as a percentage of the total funds that are
21	issued what is uncollected, that \$2.1 million since 2008,
22	so five years, do you have any idea?
23	MR. HARBESON: I would have to look at that
24	number, but I think it's running around 50 to 60 percent
25	that we collect. Now, the problem is the people that are

defaulting and going out, they normally have got a lot of problems, as opposed to our typical fine, the last time we looked at it, was running on the average of around \$500, so these are fairly minor violations, and of course, we're combining that with education. But again, these are people that are answering us that are remaining in business and want to remain in the business. These are typically people who have abandoned the business.

MR. INGRAM: They're gone.

MR. HARBESON: Yes, sir.

MR. VANDERGRIFF: But it's running about 50 percent.

MR. HARBESON: Yes, sir. But these are also typically what you're looking at with those motions for default, they're unnegotiated settlements.

MR. VANDERGRIFF: Right. They've absconded, they're gone, for the most part.

MR. HARBESON: Yes, sir.

MR. VANDERGRIFF: I understand.

MR. HARBESON: And one of the things we do where we're not negotiating down the penalty is we would like to see some hurdle or this person coming back. If he says like I'm just going to get out for two months and come back, well, if you want to get out and come back in two months, it may cost you \$2,000 in addition to the

1	license fee because you owe us a penalty.
2	MR. VANDERGRIFF: Further questions?
3	MR. BARNWELL: Any interest on those penalties?
4	MR. HARBESON: No, sir.
5	MR. WALKER: I have a question.
6	MR. VANDERGRIFF: Mr. Walker.
7	MR. WALKER: I have a question for Ms. Flores,
8	if you don't mind.
9	MR. HARBESON: I don't mind.
10	(General laughter.)
11	MR. VANDERGRIFF: Identify yourself for the
12	record.
13	MS. FLORES: For the record, Linda Flores,
14	chief financial officer.
15	MR. WALKER: Linda, for the consent ones and
16	the agreed orders where we are collecting all of this
17	money, where do we recognize that in our financial
18	statements that there's a liability and that there's an
19	asset when it is collected?
20	MS. FLORES: It's all considered revenue, so
21	when we receive the revenue, it's recognized as revenue.
22	For these default penalties, it would be considered an
23	accounts receivable; for those items that are deemed
24	uncollectable, the accounts receivable would be netted
25	against that uncollectable item.

1	MR. WALKER: But do we, as the department,
2	identify fines, penalties and assessments as a separate
3	line item?
4	MS. FLORES: I have seen governmental financial
5	statements include penalties.
6	MR. WALKER: Do we as the Department of Motor
7	Vehicles?
8	MS. FLORES: No.
9	MR. WALKER: Wouldn't that be prudent to
10	identify that particular line item and say how much of
11	your revenue in this agency came from fines and penalties?
12	MS. FLORES: Penalties are all distributed to
13	general revenue, so for these particular, if we were to
14	call them penalties, would be sent to the Comptroller as
15	general revenue.
16	MR. INGRAM: Are you wanting that just so you
17	can compare it year over year, or what's the point?
18	MS. FLORES: Mr. Harbeson and I can work
19	together to report to you on a quarterly basis the status
20	of these cases and the revenue that's owed to the state.
21	MR. WALKER: Well, you bring up an interesting
22	point that I didn't even realize we were going to get to,
23	because we do identify that revenue currently as Fund 6 or
24	as general revenue?
25	MS. FLORES: It would be considered Fund 6 if

it's revenue, but if you're going to call it an 1 administrative penalty, it's going to be deposited to 3 general revenue. MR. VANDERGRIFF: So basically, an 4 administrative penalty for financial purposes is called 5 6 revenue at the moment. 7 MR. WALKER: That's a pretty touchy issue then. 8 So it's a matter of whether we want to build roads with 9 the money. 10 MR. VANDERGRIFF: Or half a loaf, in that regard, is better than none if we're collecting 50 percent 11 of this revenue. 12 13 MR. PALACIOS: Just a question. How long do you wait before you write it off? Is it typically a year? 14 15 MS. FLORES: I think I've mentioned to you 16 before that uncollectable, while it may be considered 17 uncollectable, it never goes away, it will remain on the state's book somewhere, maybe you may not see it, but it's 18 19 going to be somewhere in case that individual or that corporation ever comes to life again and wants to do 20 business with the State of Texas. 21 MR. PALACIOS: So are we required to remit 22 revenue then on uncollectables? 2.3 24 MS. FLORES: I'm sorry? Say that again.

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MR. PALACIOS: So if you still have it recorded

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as revenue that you then have to remit to, I guess, the 1 general fund, but we haven't collected it, are we still 2 3 remitting that to the general fund? MS. FLORES: It would be netted. We would 4 identify it, once it's determined to be uncollectable, as 5 6 an uncollectable and then there's an entry to net it against that revenue. 7 8 MR. INGRAM: So it's not costing us anything. 9 MS. FLORES: No, sir. 10 MR. VANDERGRIFF: I would ask the executive director with your staff, to look at how if we're not 11 going to report it as a penalty and therefore default it 12 13 to Fund 1, but how we could identify this to the board so at least they're aware of it. 14 15 MS. BREWSTER: And the frequency. 16 MR. VANDERGRIFF: Yes. 17 MR. WALKER: I'd just like to know the volume, how much do we assess in fines and penalties annually or 18 19 monthly or whatever. MR. HARBESON: I can provide that by the month. 20 I mean, that's something we capture every month, the 21 exact number assessed and the exact amount that is 22 collected. 2.3 24 MR. WALKER: That I would like to see. 25 MS. FLORES: And we could maybe make it

cumulative so that you see everything else that's on there, plus the new ones so that way those old ones do kind of stay in front of you so that you can see. I know at an agency that I was previously employed, I think I mentioned there were cases there over 20 years old.

MR. WALKER: Over how many?

MS. FLORES: Twenty years because they do not go away.

MR. VANDERGRIFF: Any further questions on this topic?

(No response.)

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MR. VANDERGRIFF: Okay. We're going to take up one more, and I know I'm pushing the envelope here, and that would be the executive director reports. We will leave the automation and the audit of county equipment replacement project till after executive session because, basically, that will then just leave automation-related projects, and others in the agency or in the audience who do not wish to hear about that can go about the rest of their business so that we don't leave you hanging on the last item, which will be 7.F, which is the executive director reports.

MS. BREWSTER: Thank you, Mr. Chairman.

If the board will recall, it authorized the executive director to enter into an agreement with the

Texas Department of Transportation not to exceed \$5 million that lays out the roles and responsibilities of both agencies as the Texas DMV becomes more self-supportive. I just want to report that both agencies have agreed upon the draft language of the agreement. The board authorized me to enter into this agreement, with consultation from the chairman. I have consulted the chairman, the draft language is acceptable to both agencies, I have signed that agreement, and it is now before the Department of Transportation for execution.

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I would like to point out that this new agreement is an improvement over the previous agreement and that it now lays out very clearly the process that the DMV requests services from TxDOT. It also lays out clearly the invoicing process and how we will then pay TxDOT for those services. It also identifies key staff and backup staff for invoicing and requesting service so it's very clear what the process is. And I feel confident that this language will gives us a much better level of expectation between the two agencies so that we can mitigate future issues in terms of proper payment procedures. So I just wanted to report that to the board.

MR. VANDERGRIFF: And I guess in the future if we ever refer to it, we'll refer to it as an interagency agreement.

MS. BREWSTER: The new agreement is actually an interagency agreement, and that was at the request of TxDOT.

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MR. INGRAM: So instead of being an MOU.

MR. VANDERGRIFF: Two agencies making agreement. That's typical, I guess, in state government.

MS. BREWSTER: Mr. Chairman, if there are no further questions on this topic, I'd like to ask Ms.

Heikkila to come forward and give an update on our agency move and some of our transition projects that are currently in flight.

MS. HEIKKILA: Mr. Chairman, members. For the record, my name is Dawn Heikkila, I'm the chief operating officer for the DMV.

Just a real brief update. We are working diligently with TxDOT and the Texas Department of Criminal Justice to relocate staff currently housed at Riverside to consolidate our operations at both the Camp Hubbard and the Bull Creek facilities. TxDOT has begun moving people out of Building 5, which is the additional facility at Camp Hubbard that the DMV has been allocated space in. They began moving staff on October 26 and working to coordinate our efforts, the DMV and TxDOT, we immediately followed their path. They vacated on Friday, we came back Saturday morning and removed the existing modular from the

first phase in preparation for carpet install.

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We were hoping to have the build-back underway at this time for phase one in Building 5. That has been delayed. There is an issue with the slab in that building. There's a moisture issue and TxDOT is working to remediate the moisture issue so that carpet can be installed. We don't believe that this issue will delay the project more than about a week or so, but that is contingent on TxDOT to take remedial action and get the carpet installed.

Phase two of TxDOT vacating Building 5 begins tomorrow, Friday, and we have scheduled with the Texas Department of Criminal Justice to follow them immediately on Monday to come in and do the tear out of the existing modular which will need to be reconfigured to add the density we need to move staff.

We have some additional activities going on in this building, as well as at Bull Creek. There are some moves that we're trying to facilitate that aren't dependent on TxDOT actions, so we continue to work with those. We have received the drawings for these areas yesterday afternoon, and we'll be working with the individual divisions to make sure that the drawings we have meet their needs and that the staff will be properly accommodated and have the tools they need to do their

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I was made aware this morning that the Texas Department of Public Safety has some TCI modular components. As we move through our reconfiguration process, we're going to have to purchase some modular products from the Texas Department of Criminal Justice, and that can be a very costly endeavor. We were made aware this morning that DPS has donated modular components that are in excellent condition. We have gone out, viewed them, taken pictures of them. The estimated value of this gift is about \$15,000. The product will be delivered here to out back dock this afternoon and we'll be reusing that probably in this building to help facilitate the relocation of our staff. Ideally, we'd like to have everyone relocated before the session starts and we're working as, pedaling as fast as we can to make that happen.

MR. PALACIOS: Ms. Heikkila, how many staff members are we talking about, when this is all said and done, that will be relocated here?

MS. HEIKKILA: We will be relocating the entire IT team from this building to Building 5, that's about 108 people. We'll also be relocating contractors that currently sit in this building to Building 5, that's about 30 people. We'll be relocating staff at Riverside to this

building here, Building 1, that's about 140 people. And then we have some shuffling going on, we have the Motor Carrier, we have pieces of Motor Carrier that sit in Building 5 on the second floor right now, two pieces, the IRP Program and Credentialing, that will be relocated to Bull Creek to consolidate that division, and that's about 31 people will be affected.

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MR. WALKER: When do we anticipate having everybody out of Riverside?

MS. HEIKKILA: We are trying our best to do that by the end of the calendar year. We'd like to have everyone settled before the session starts so no one is supporting the session living out of boxes. However, our planning and our schedules are very much tied to the activities of TxDOT.

MR. VANDERGRIFF: Basically, we can't move until they move.

MS. HEIKKILA: Right.

MR. VANDERGRIFF: It's a domino effect.

MS. HEIKKILA: Dropping dominoes, yes.

We do have a followup meeting with the TxDOT facilities folks scheduled for the 15th of this month to pull together, see where we're at, look at future schedules and begin planning for phase three of their evacuation of Building 5. At that point in time we

anticipate that they will have people still in what we are calling the executive wing, which is the smaller portion of the first floor of Building 5, as well as that they have an IT group that sits in the middle of the two sections that they are vacating, and so we're hoping to have some scheduling and planning.

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As soon as we can tie down scheduling for actually physically relocating our folks, we'll certainly be letting staff know. Our plan is to give the affected divisions as much notice as possible. We don't want to have a situation where they come to work one morning and it's like: Okay, it's your turn, bye. So we want to make sure that we plan and we move as efficiently as possible, and we're trying to do this in such a manner that we only move people one time. There will be instances where that's just not going to be feasible because of the shuffling around of the organization.

MR. WALKER: Everything stays status quo with Oversize/Overweight. Correct? They're going to stay over at Hubbard?

MS. HEIKKILA: There may be some internal shuffling around; that's at the discretion of the division director, but they will remain onsite where they currently reside.

MR. WALKER: We don't have any empty space over

there, do we? 1 2 MS. HEIKKILA: I'm sorry? 3 MR. WALKER: Do we have any empty space over there or has that all been utilized, because I think 4 that's temporary buildings. 5 6 MS. HEIKKILA: We have one large training room that's being repurposed, and we are having ten modular 7 work stations installed in that area. 8 That will facilitate the move of the existing Motor Carrier pieces 9 10 that are in Building 5 to Bull Creek. MR. WALKER: Oh, so John's group, they're all 11 12 going to move over to there. 13 MS. HEIKKILA: Right. We're going to consolidate all of the pieces of Motor Carrier over at 14 15 Bull Creek under Jimmy. 16 MR. WALKER: That's good. 17 MS. HEIKKILA: Any questions? (No response.) 18 19 MS. HEIKKILA: The other update I have for you deals with our infrastructure projects, formerly known as 20 separation projects, transformation projects. 21 These are specifically identified to create or support an 22 independent infrastructure. Our IT group continues to work 2.3 24 very diligently on a variety of projects and activities

associated with separating our infrastructure and creating

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an independent network and infrastructure for the agency.

We have some specific activities that are currently underway.

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Regional and headquarter communication infrastructure projects -- you may have heard these previously mentioned as VoIP, Voice over IP. One of the challenges in relocating staff to Building 5 is a cabling issue. That building currently is cabled with CAT-3 wiring and we need it to be a minimum of CAT-5E, or industry graded higher, to support consolidated data and voice on one transmission line.

We have our wide area and local area network separation projects underway. We are working on a directory services separation project. We are migrating the agency's email from the existing GroupWise to the Office 365 Outlook system, and that project is well underway and I'll have a few additional comments in a moment on that.

We are looking to replace the hardware, the servers that support the IRP program. We're also establishing, as we work to establish an independent infrastructure and network, the assets that support the hardware and software applications will be transformed in the State Data center, as is required by statute.

We have some additional infrastructure tasks

planned or they're in the planning phase right now, and that is to replace the inventory and transportation logistics system out of Huntsville. That's the system that monitors and tracks the amount of plates, stickers and placards available for distribution to the counties, as well as supplies, and the actual distribution to the counties, the shipping of those items.

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Additionally, we're going to look to address the electronic document management system. We have a system that we inherited and we're looking now to see does it make the business sense to upgrade the existing system or to totally replace it with something different, and a lot of that will be driven by the technology platform defined by the RTS refactoring project.

With regard to the email migration, our target date to have that complete is December 3. The cut-over when we make the actual transition from the existing system to the new system will happen over the weekend prior to that.

We have asked staff to work very diligently in reducing the amount of data that's in their email boxes.

We've asked them to drop the content below 500, to or below 500 megabytes. That was a pretty daunting task when we sent the directive out in October, and I'm happy to report that over 50 percent, 57 percent of our staff, have

actually met that goal and are maintaining.

We are creating, per the instructions of our executive director, our top ten or out top twenty high offenders, trying to use a little peer pressure to get them under, and I'm embarrassed to say that I'm probably ranking within the top five.

We're also piloting the cut-over, the transition from GroupWise to Outlook, to help mitigate any anxieties that staff would have in changing the email system. We have sent out an email to all of our division directors asking for volunteers.

We want to make sure that we capture the functionality that we need which includes the calendaring program, so we're asking one of the volunteers for each of the divisions be an administrative person that uses the calendaring function so that we can make sure we test that as well.

We are working with our implementation vendor, as well as technical team, to identify mailboxes that we call resource mailboxes. These have large amounts of data, several terabytes, actually, of data, that support a business process to make sure that when we transition from one system to the other, we don't lose any data that we may be required to keep either to facilitate business processes or to address open records or any kind of

pending litigation.

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And the team has done a wonderful job working with the Department of Information Resources, the State Data Center service providers, as well as our implementation vendor to be very diligent in assessing and working with the divisions to make sure that we've accounted for everything that they need.

We understand and appreciate that change, any amount of change, contains a cultural transformation or cultural challenges, and recognizing this, we've put steps in place to educate and train the staff on an ongoing basis. There are online resources that they can tap into, there will be step-by-step instructions provided. We're looking at providing laminated resource quick reference cards that they can maintain at their desktop that will tell them how to navigate the system and establish the rules that they need moving forward.

That pretty much concludes my presentation. If you have any other questions, I'd be happy to address those.

MS. BREWSTER: One thing I might add is that we are arranging for in-person training so that people can come down at their leisure and have someone to assist them maneuvering around in Outlook, because we do recognize that there are those who have worked only in GroupWise for

many years, and so we do not want the agency to come to a standstill come December 3 and folks not be able to maneuver around in their email because that is such an integral part of our communications here.

MS. HEIKKILA: Right. We've also taken great care in making sure that the help desk that's going to support this new application is properly trained and can provide hands-on, one-to-one assistance when we cut over, if it's needed or as it's needed. If we have staff that are a little squeamish on the first day and they want somebody to help step them through the process, then we have those resources available as well.

MR. VANDERGRIFF: Thank you very much. Any questions?

(No response.)

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MR. VANDERGRIFF: With that, we do have, again, two items that will be pending after executive session which will be briefings on 5.D and on 6.B.

We're going to take a short break -- it is 12:20, thereabouts, on November 8, and we will take a 10-minute, 15-minute break, and then go into executive session pursuant to Sections 551.071 and 551.074 to discuss personnel matters.

I do anticipate being in executive session for approximately an hour; it could be longer, and we will

reconvene in open session after that. And with this, we are recessed from the public meeting and we are in a 15-minute break before going into executive session.

(Whereupon, at 12:20 p.m., the meeting was recessed, to reconvene this same day, Thursday, November 8, 2012, following a recess and conclusion of the executive session.)

MR. VANDERGRIFF: It is approximately 1:27 p.m. on November 8, 2012, and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note for the record that no action was taken in the closed session.

We have two items left on our agenda, and the first is item 6.D which is an update on the TxDMV automation projects. I do note that in your book you do have a written summary, but I'll turn it to the executive director as she sees fit.

MS. BREWSTER: Thank you, Mr. Chairman.

As the board is keenly aware, there are a number of automation projects that are currently in various stages of development within the agency. These projects are imperative for the agency, not only in terms of efficiency but also in better serving our customers and our stakeholders. I do want to mention that the agency has brought on an Enterprise Project Management Office

director specifically to be responsible for the development and management of these projects.

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I would like to mention when we're talking about automation projects, we are referring to the FY 2012-13 funded projects. What we said we were going to do with those funds were three things:

One, phase one of that project was that we were going to complete 57 enhancements to improve the functionality of our system, and phase one has been completed. It was completed on January 31, 2012.

Phase two addressed a business process analysis for the agency's core enterprise programs. That exercise began March 2011 and was completed in December 2011.

Phase three was a culmination of the first two phases together, the recommended improvements in technology and processes in an RFP to modernize the registration and titling system and address the business requirements defined by the business process analysis that was done in phase two.

The RFP was distributed in May 2012, the vendor solutions were submitted to the agency August 30 of this year, and we are currently reviewing those proposals submitted to refactor the current registration and titling system mainframe. Also in those projects are any infrastructure projects that are needed to be able to do

the RTS refactoring project.

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The agency has requested in FY '14 and '15 additional funds to do the Motor Vehicle Enterprise

Systems project, and this is where we will see more of our service delivery channels being added to our system. This is where we're going to be looking at the ability to do things online. Those are the projects where our customers will really start to see a difference.

And so I wanted to just point out that in your binders you have a list of all of the projects that are being considered by the department, and they're split out in terms of are they automation projects, are they moves projects. Also, you'll see the update of those projects, the status of those project, as well as if these are public-facing projects or they're core infrastructure projects or they're internal efficiency projects. So I'd just make you aware that those are in your binders. There are a lot of projects and so we're working hard to organize those in a way that you can better see the progress on those and you can identify who's going to be impacted by each of these projects.

So with that, I'd be happy to answer any questions that the board has.

(No response.)

MR. VANDERGRIFF: Seeing none, the last item is

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on 7.B and that was the audit of the county equipment replacement. Board members, you do have a detailed report in your binder, and I do not know, either from the executive director from your perspective, if you'd like any further briefing. Bill Lawler is here. And if not, if you think the written report is sufficient, then he certainly is available for questions.

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MR. BARNWELL: Mr. Chairman, I move that we accept the written report as submitted.

MR. VANDERGRIFF: Okay. I think at this point we don't have to accept this report, or do we need to accept this report? I don't think we do, it's just a pure briefing. Thank you very much. Well, with that, unless the executive director has any additional business, we have come to the end of our agenda, and I would be pleased to entertain a motion to adjourn.

MR. WALKER: I so move.

MR. BARNWELL: Second.

MR. VANDERGRIFF: We have a motion to adjourn by Member Walker, seconded by Member Barnwell.

MR. BARNWELL: I'd like to discuss that for about 30 minutes.

(General laughter.)

MR. VANDERGRIFF: I don't think you'll make it past your first minute.

1	With that, please raise your right hand in
2	support of the motion to adjourn.
3	(A show of hands.)
4	MR. VANDERGRIFF: We are adjourned. Thank you
5	very much for attending.
6	(Whereupon, at 1:33 p.m., the meeting was
7	concluded.)

1 CERTIFICATE 2 MEETING OF: TxDMV Board 3 LOCATION: Austin, Texas 4 5 DATE: November 8, 2012 6 I do hereby certify that the foregoing pages, 7 numbers 1 through 125, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording 8 9 made by electronic recording by Nancy H. King before the 10 Texas Department of Motor Vehicles. 11 12 13 14 15 16 /s/Nancy H. King 11/15/2012 17 (Transcriber) 18 19 On the Record Reporting

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